TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901~~. 1902.

No. ~~527~~. 273.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. NAVY, ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MARCH 15, 1902.
(13,450.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 597.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. NAVY, ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption	a	1
Libel	1	1
Answer of the United States	7	4
Replication to answer of United States	11	6
Answer of the Secretary of the Navy	12	7
Replication to answer of Secretary of the Navy	13	7
Decree of condemnation	14	8
Application for appeal	16	9
Stipulation as to record on appeal, etc	17	9
Clerk's certificate	19	10

20404—02

a Supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR ADMIRAL, UNITED States Navy, commander in chief, in his own behalf and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic station, who took part in the naval engagement off Santiago de Cuba, on July 3, 1898, and subsequent captures, *vs.* THE SPANISH VESSEL OF WAR "INFANTA MARIA Teresa" and miscellaneous stores and supplies captured upon her and other Spanish war vessels.	No. 562, district court.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 LIBEL.—*Filed July 31, 1899.*

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR ADMIRAL, UNITED States Navy, commander in chief, in his own behalf and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic station, who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures, *v.* THE SPANISH VESSEL OF WAR "INFANTA MARIA Teresa" and miscellaneous stores and supplies captured upon her and other Spanish war vessels.	No. 562, district court.

To the honorable the supreme court of the District of Columbia, holding a special term for district court business:

2 William T. Sampson, a rear admiral of the United States Navy, and at all times hereinafter named the commander in chief of the United States naval force on the North Atlantic station, in his own behalf and also in behalf of all of the officers and enlisted men of the United States Navy who served with the said United States naval force and took part in a certain naval engagement hereinafter described off Santiago de Cuba, on July 3, 1898, and in captures made subsequent thereto, and also, so far as he is by law permitted, on behalf of the United States, brings this, his libel, against all persons claiming any interest in the prize property hereinafter described and against the said property, in a cause of maritime prize, and respectfully shows:

I. That at all times during the months of June and July of 1898 and thereafter, a fleet composed of part of the said United States naval force,

acting under the immediate command of this libellant, as the commander in chief, remained off Santiago de Cuba. Commodore Winfield S. Schley, U. S. Navy, was the commanding officer of a division of the said fleet, under the orders of this libellant, and Captain French E. Chadwick, U. S. Navy, was fleet captain or chief of staff.

II. Among other vessels, the said fleet included those next hereinafter named, all of them being vessels of the United States Navy, duly officered and manned as such:

United States flagship "New York," commanded by Captain French E. Chadwick, U. S. Navy.

United States steamer "Brooklyn," commanded by Captain Francis A. Cook, U. S. Navy.

United States steamer "Texas," commanded by Captain John W. Philip, U. S. Navy.

United States steamer "Iowa," commanded by Captain Robley D. Evans, U. S. Navy.

United States steamer "Indiana," commanded by Captain Henry C. Taylor, U. S. Navy.

3 United States steamer "Oregon," commanded by Captain Charles E. Clark, U. S. Navy.

United States auxiliary cruiser "Gloucester," commanded by Lieut.-Commander Richard Wainwright, U. S. Navy.

United States auxiliary cruiser "Hist," commanded by Lieut. Lucien Young, U. S. Navy.

United States torpedo-boat "Ericsson," commanded by Lieut. Nathaniel R. Usher, U. S. Navy.

United States auxiliary cruiser "Vixen," commanded by Lieut. Alexander Sharp, jr., U. S. Navy.

III. That on or about July 3, 1898, a state of war then existing between the United States and the kingdom of Spain, the said vessels of the United States Navy did capture from the King of Spain the armored cruiser "Infanta Maria Teresa" and a large quantity of naval stores and supplies and other property then upon the said cruiser, and upon other vessels of the King of Spain, to wit: The armored cruisers "Vizcaya," "Almirante Oquendo," and "Cristobal Colon," and the torpedo-boat destroyers "Pluton" and "Furor." The said stores, supplies, and other property consisted of torpedoes, guns, gun-mounts, rifles, ammunition, searchlights, coin, currency, and other miscellaneous articles. It is not now possible for this libellant to give a complete inventory of the said captured property.

IV. That the captures of the said "Infanta Maria Teresa" and other property were made during or as the result of a naval engagement which took place on or about July 3, 1898, off Santiago de Cuba between the vessels of the United States Navy aforesaid and a naval force of the King of Spain then and there present, which consisted of the

4 armored cruisers "Infanta Maria Teresa," "Vizcaya," "Almirante "Oquendo," and "Cristobal Colon," and the torpedo-boat destroyers "Pluton" and "Furor," and was supported by Spanish land batteries at or about the harbor of Santiago de Cuba, which took part in the said engagement. This libellant is informed and believes that the said naval force of the King of Spain, supported as aforesaid, was of force equal or superior to that of the said vessels of the United States Navy.

V. That the said "Infanta Maria Teresa" and other captured property hereinbefore mentioned, subsequent to her and its capture as aforesaid, were taken for and appropriated to the use of the United States, and all of the said property except the said "Infanta Maria Teresa" is now in the possession of the Secretary of the Navy or the proceeds of sales thereof are deposited in the Treasury of the United States, and for that reason no part of it has been or can be sent in for adjudication to any court of the United States. The said "Infanta Maria Teresa," after being taken for and appropriated to the use of the United States, and while in the possession of the United States, under the control of the Secretary of the Navy, being in charge of contractors employed by him, did, on or about October, 1898, sail from the port of Guantanamo de Cuba, bound for the port of Norfolk, in the State of Virginia, and while on the said voyage, to wit, on or about November 1, 1898, was abandoned at sea and drove ashore upon Cat Island. Thereafter the said "Infanta Maria Teresa" was duly surveyed by a board of officers, appointed by the Secretary of the Navy, which proceeded to Cat Island for that purpose, and, pursuant to the report and recommendation of the said board, was finally abandoned on or about November 20, 1898, and for that reason can not be sent in for adjudication to any court in the United States.

5 VI. That the said "Infanta Maria Teresa" and other captured property has been or will be duly surveyed, appraised, and inventoried, and this libellant prays that a copy of the said survey, appraisal, and inventory be returned to this court.

VII. That although more than three months have now elapsed since the capture aforesaid, no district has been designated by the Secretary of the Navy wherein proceedings should be instituted for the condemnation of the said captured property as prize or for the adjudication of the rights of this libellant and of the officers and men of the said vessels of the United States Navy, or of any person claiming to be entitled to the said property; wherefore the premises aforesaid are within the jurisdiction of this honorable court, holding a special term, with the jurisdiction of a district court of the United States.

In consideration whereof this libellant prays:

1. That a monition in due form of law may be issued by this court to the honorable the Secretary of the Navy and the attorney of the United States for this district, and to such other persons as this court shall order to be notified, commanding them to appear herein and show cause if any they have why judgment or decree of condemnation in prize should not be entered whereby all of the said captured property shall be condemned as prize to this libellant and the officers and men of the said vessels under his command, in accordance with sec. 4630 of the Revised Statutes of the United States.

2. That a copy of this libel be served upon the attorney of the United States for this district, and that another copy thereof be served upon the honorable the Secretary of the Navy, and a rule be laid upon him to show cause if any he has why the value of the said captured property,

6 shown or which may be shown by the survey, appraisal, and inventory, should not be deposited with the Treasurer or the

assistant treasurer of the United States nearest to the place of the session of this court, subject to the order of the court to be entered in this cause.

3. That this libellant and the officers and enlisted men of the said vessels of the United States Navy, under his command, as aforesaid, have such other and further relief and redress as this honorable court is competent to give in the premises.

4. That a day may be set on or before which all persons claiming an interest herein shall appear and answer this libel.

WILLIAM T. SAMPSON.

JOS. K. MCCAMMON,
JAMES H. HAYDEN,
Proctors for Libellant.

WEBB & WEBB,
CHARLES & WILLIAM B. KING,
Of Counsel for a number of officers and men of the said force.

STATE OF NEW JERSEY, *County of Essex, ss:*

William T. Sampson, being duly sworn, deposes and says that he is the libellant named in and who subscribed the foregoing libel; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be on his information and belief, and that as to those matters he believes it to be true.

WILLIAM T. SAMPSON.

Subscribed and sworn to before me the sixteenth day of July, A. D. 1899.

[SEAL.] NATHAN RUSSELL,
Notary Public.

7 Filed January 8, 1900.

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. NAVY, commander in chief, in his own behalf and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic Station who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures,	District court, No. 562.
v.	
THE SPANISH VESSEL OF WAR "INFANTA MARIA Teresa" and miscellaneous stores and supplies captured upon her and other Spanish war vessels.	

IN PRIZE.

THE ANSWER OF THE UNITED STATES.

To the honorable the supreme court of the District of Columbia, holding a special term for district court business:

The Attorney-General, in behalf of the United States, now the lawful owner of all the property sought to be condemned as prize in the

above-entitled cause, reserving all objections and exceptions what-
8 soever, answers the libel filed in this cause, and the intervening petition of Joseph G. Eaton, commander, United States Navy, also filed in this cause, as follows:

I and II. The averments contained in the first two sections of the libel are true.

III. It is true that on or about July 3, 1898, a state of war existed between the United States and the Kingdom of Spain, but the Attorney-General denies that the libellant and the vessels under his command captured from the King of Spain the armored cruiser "Infanta Maria Teresa" and a large quantity of naval stores, supplies, and other property then upon the said cruiser, and upon other vessels of the King of Spain, to wit: The armored cruisers "Vizcaya," "Almirante Oquendo," and "Cristobal Colon," and the torpedo-boat destroyers "Pluton" and "Furor," as averred in the third section of said libel; and the Attorney-General avers that all the hereinabove-named vessels of the King of Spain were sunk or destroyed on or about July 3, 1898, by the libellant and the vessels under his command, so that neither any of the said vessels of the King of Spain, nor any naval stores, supplies, or other property upon the same could become the subject of condemnation in prize to the libellant and the officers and crews of the vessels under his command.

IV. The sinking or destruction of the hereinabove-named vessels of the King of Spain occurred during or as the result of a naval engagement which took place on or about July 3, 1898, off Santiago de Cuba between the vessels of the United States Navy, under the command of libellant, and the hereinabove-named vessels of the King of Spain,
9 but the Attorney-General denies that the said naval forces of the King of Spain, supported by any land batteries, to the fire of which the said vessels of the United States Navy were exposed during the said engagement, was of force equal or superior to that of the said vessels of the United States Navy.

V. After the sinking or destruction of the hereinabove-named vessels of the King of Spain, the "Infanta Maria Teresa" was raised by the United States, and at its own cost, and property of various kinds was recovered therefrom and from the wrecks of the other hereinabove-named vessels of the King of Spain, by the United States and at its own cost; and the said "Infanta Maria Teresa" and all of the said property were taken for and appropriated to the use of the United States, and all of the said property except the said "Infanta Maria Teresa" is now in the possession of the United States, or the proceeds of sales thereof are deposited in the Treasury of the United States, and for that reason no part of it has been or can be sent in for adjudication to any court of the United States. The averment in the fifth section of the libel as to the subsequent loss of the said "Infanta Maria Teresa," after it was raised by the United States, is true.

VI. The said "Infanta Maria Teresa," and the other property sought to be condemned as prize in this cause, have been duly surveyed, appraised, and inventoried, and a copy of the said survey, appraisal, and inventory can be furnished in response to an order of this court.

VII. The averments contained in the seventh section of the libel are true except in this, that the property therein referred to was not captured

as prize, but was recovered after it had been sunk in action, or
10 was recovered from the wrecks of vessels sunk in action, as stated in the third section of this answer; but the Attorney-General admits that the issues raised by the libel in this cause and by this answer are within the jurisdiction of this honorable court holding a special term with the jurisdiction of a district court of the United States.

And the Attorney-General insists upon all the above-stated matters of defense in law as if the United States had availed itself thereof by demurrer.

Wherefore, the Attorney-General prays that the libel filed in this cause be dismissed, and that the United States be allowed all its costs and charges in this behalf sustained.

JOHN W. GRIGGS,
Attorney-General.

11 REPLICATION.—*Filed January 12, 1900.*

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. Navy, commander in chief, in his own behalf, and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic station who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures,	District court, No. 562.
v.	
THE SPANISH VESSEL OF WAR "INFANTA Maria Teresa," and miscellaneous stores and supplies captured upon her and other Spanish war vessels.	

Now comes the libellant and joins issue on the answer of the United States in the above-entitled cause.

JOS. K. MCCAMMON,
JAMES H. HAYDEN,
Proctors for Libellant.

12 ANSWER OF THE SECRETARY OF THE NAVY.—*Filed April 25, 1900.*

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, United States Navy, commander in chief, in his own behalf, and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic station who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures,

v.

THE SPANISH VESSEL OF WAR "INFANTA Maria Teresa," and miscellaneous stores and supplies captured upon her and other Spanish war vessels.

No. 562, District court.

To the honorable the justices of the supreme court of the District of Columbia, holding a special term with the jurisdiction of a United States district court:

The Secretary of the Navy, in compliance with the rule of this court, which has been duly served upon him, requiring him to show cause, if any he have, why the prayer of the libel in this case should not be granted, respectfully calls the attention of the court to the answer which has been made by the Attorney-General in behalf of the United States to the said libel (which answer was filed on the 8th day of January last), and declares his full concurrence in the said answer and requests that the same may be taken as his answer to the libel filed in this cause, and to the rule of this honorable court.

J. D. LONG,
The Secretary of the Navy.

13 REPLICATION TO ANSWER OF SECRETARY OF THE NAVY.—*Filed July 2, 1900.*

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. Navy, commander in chief, in his own behalf, and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic station who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures,

v.

THE SPANISH VESSEL OF WAR "INFANTA Maria Teresa," and miscellaneous stores and supplies captured upon her and other Spanish war vessels.

District court, No. 562.

Now comes the libellant and joins issue on the answer of the Secretary of the Navy in the above-entitled cause.

McCAMMON & HAYDEN,
Proctors for Libellant.

14 DECREE OF CONDEMNATION.—*Filed July 30, 1901.*

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. Navy, commander in chief, in his own behalf, and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic station who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures,

vs.

THE SPANISH VESSEL OF WAR "INFANTA Maria Teresa," and miscellaneous stores and supplies captured upon her and other Spanish war vessels.

District court, No. 562.

This cause came on to be heard upon the libel, the answer of the United States, the answer of the Secretary of the Navy, and proofs adduced by the libellant and the United States, and was submitted by counsel for all parties on briefs and oral argument; and it appearing to the satisfaction of the court that on July 3, 1898—a state of war then existing between the United States and Spain—a naval engagement took place off Santiago de Cuba between a fleet of the United States naval force on the North Atlantic station, under the command of the libellant, and a fleet of Spanish vessels of war, wherein the Spanish armored cruiser "Infanta Maria Teresa," together with her guns, munitions of war, equipment, stores, money, and other articles, and certain guns, munitions of war, equipment, stores, money, and other articles then on board of the Spanish vessels of war "Viscaya," "Almirante Oquendo," "Cristobal Colon,"
15 "Pluton," and "Furor" were captured by the said United States fleet; and thereafter the said "Infanta Maria Teresa" and the said guns, munitions of war, equipment, supplies, money, and other articles were appropriated by the United States for the use of the Navy Department, and none of them have been or can be sent in for adjudication.

It is, this 31st day of July, 1901, adjudged, ordered, and decreed: That the said "Infanta Maria Teresa" and the said guns, munitions of war, equipment, stores, money, and other articles are condemned and forfeited to the United States as lawful prize of war;

That upon the ascertainment of the value of the said "Infanta Maria Teresa" and the said guns, munitions of war, equipment, stores, money, and other articles, the Secretary of the Navy shall deposit an amount equal thereto with the Treasurer of the United States, subject to further orders of this court in this cause;

That the libellant and the officers and enlisted men of the United States Navy who took part in the said naval engagement off Santiago de Cuba, and in behalf of whom he brings this suit, are entitled to receive a moiety of the said amount; and

It is further ordered and adjudged: That this cause be referred to the auditor of this court to determine and state the value of the said "Infanta

Maria Teresa" and the said guns, munitions of war, equipment, stores, money, and other articles captured and appropriated by the United States as aforesaid and hereby condemned as prize.

A. C. BRADLEY, *Justice.*

(Endorsed:) Approved as to form: G. H. Gorman, special attorney, U. S.

16 APPLICATION FOR AN APPEAL.—*Filed August 2, 1901.*

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. Navy, commander in chief, in his own behalf and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic station who took part in the naval engagement off Santiago de Cuba on July 3rd, 1898, and subsequent captures, *v.* THE SPANISH VESSEL OF WAR "INFANTA Maria Teresa" and miscellaneous stores and supplies captured upon her and other Spanish war vessels.	District court, No. 562.

Come now the United States of America, by their Attorney-General, and from the decree of this honorable court entered on the 31st day of July, 1901, give notice of and make application for an appeal to the Supreme Court of the United States.

G. H. GORMAN,
Special Attorney for the United States.

Due service of the above application is hereby acknowledged this 1st day of August, 1901.

McCAMMON & HAYDEN,
Proctors for Libellant.
GEORGE A. & WM. B. KING.

17 Filed Mar. 12, 1902.

In the supreme court for the District of Columbia.

WILLIAM T. SAMPSON, ADMIRAL, U. S. N., etc., *v.* SPANISH VESSEL OF WAR "Infanta Maria Teresa," etc.	No. 562, District court.

STIPULATION.

It is stipulated and agreed by and between the counsel representing the libellant, a number of officers and men, and the United States, that,

for the purpose of a speedy submission of the question of the jurisdiction of the Supreme Court of the United States on appeal, the record in the appeal of the United States from the decree entered July 31, 1901, shall be composed of the following matter only: The libel, the answer of the United States, the replication, the answer of the Secretary of the Navy, the replication to the answer of the Secretary of the Navy, the decree, the application for appeal, and the stipulation in regard to the record.

It is further stipulated and agreed that in case the Supreme Court should decide that it has jurisdiction to entertain the appeal of the United States upon the merits of the case, the record shall be enlarged for the purpose of the hearing of this appeal, so as to bring before that court the same record which was sent to the court of appeals of the District of Columbia on the appeal of the United States taken to that court.

McCAMMON & HAYDEN,
Proctors for Libellant.

18 GEORGE A. KING,
WM. B. KING,
Proctors for a Number of Officers and Men.
CHARLES C. BINNEY,
Special Attorney.

19 Supreme court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss.

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 18, inclusive, to be a true and correct transcript of the record, as per stipulation of counsel herein filed, copy of which is made part of this transcript, in cause No. 562, District court, wherein William T. Sampson, rear-admiral, United States Navy, etc., is libellant, and the Spanish vessel of war "Infanta Maria Teresa," etc., is libellee, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at the city of Washington, in said District, this 13th day of March, A. D. 1902.

[SEAL.] JOHN R. YOUNG, *Clerk.*

20 (Indorsement on cover:) File No. 18450. District of Columbia court of appeals. Term No., 597. The United States, appellant, *vs.* William T. Sampson, rear-admiral, U. S. Navy, et al. Filed March 15, 1902.

○

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CLERK'S COPY.

ADDITIONAL TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term,

No.

WILLIAM

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 597.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. NAVY, ETC.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption	a	1
Libel	1	1
Order for process	7	v
Monition	9	vi
General notice	11	vii
Proof of publication	13	viii
Motion for rule on Secretary of Navy	16	x
Letter of Secretary of Navy, October 16, 1899	18	xi
Letter of Secretary of Navy, November 2, 1899	19	xi
Rule on Secretary of Navy	20	xii
Answer of the United States	21	xiii
Replication to answer of United States	25	xv
Answer of the Secretary of the Navy	26	xv
Replication to answer of Secretary of Navy	27	xvi
Depositions and other evidence printed under stipulation of parties, filed December 12, 1900	28	1
Index	28	1
Appraisement of "Infanta Maria Teresa," etc	28	1
Extracts from the log of the U. S. S. "Vulcan"	30	3
Order convening naval court of inquiry, November 17, 1898	36	9
Telegram of Lieutenant-Commander Ira Harris to Secretary of Navy, November 4, 1898	37	10
Findings naval court of inquiry, December 2, 1898	40	13
Exhibit G.—Contract of Merritt & Chapman Derrick and Wrecking Company with the United States, February 6, 1898	42	15

23569—02——0

	Original.	Print.
Depositions, etc.—Continued.		
Dispatch from Acting Secretary of Navy to Commodore Watson, August 27, 1898	45	18
Report of Commander Harris, September 28, 1898	45	18
Report of J. W. Chittenden, October 4, 1898	47	20
Report of Commander Harris, October 18, 1898	47	20
Order of Captain Chester, October 27, 1898	50	23
Order of Captain Chester, October 29, 1898	50	23
Report of Captain Chester, October 31, 1898	51	24
Report of Lieut. George P. Blow, November 3, 1898	53	26
Deposition of Capt. French E. Chadwick	58	31
Deposition of Lieut. Commander Sidney A. Staunton	70	43
Deposition of Gardiner C. Sims	83	56
U. S. Exhibit A.—Letter of Gardiner C. Sims to Rear-Admiral Rogers, August 2, 1899	95	68
Deposition of Capt. Colby M. Chester	95	68
U. S. Exhibit B.—Report of Captain Chester to board of inspection and survey, July 25, 1899	108	81
Deposition of Ira Harris	109	82
U. S. Exhibit C.—Letter of Ira Harris to Rear-Admiral Rodgers, July 18, 1899	123	96
Certificate to evidence	124	97
Depositions and other evidence printed under stipulation of the parties, filed December 17, 1900	126	99
Index	126	99
Reports submitted to the board of inspection and survey	126	99
Stipulation as to appraisal	136	109
Deposition of Capt. Henry C. Taylor	137	110
Commander Newton E. Mason	142	115
Commander Raymond P. Rodgers	155	128
Lieut. E. E. Capehart	166	139
Naval Constructor R. P. Hobson	176	149
Contract of Merritt & Chapman Derrick and Wrecking Company with the United States, February 29, 1898	191	164
Applications for bounty money	193	167
Description of the "Infanta Maria Teresa"	202	173
Decree of condemnation	205	177
Application by United States for appeal	207	178
Waiver of citation	208	179
Designation of papers to form transcript on appeal	209	179
Waiver as to time to file transcript on appeal	210	180
Directions for preparation of transcript	211	181
Clerk's certificate	212	181
Stipulation that supplemental transcript be added to record	213	182

a Supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, UNITED States Navy, commander in chief, in his own behalf, and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic Station, who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures, *vs.* THE SPANISH VESSEL OF WAR "INFANTA Maria Teresa," and miscellaneous stores and supplies captured upon her and other Spanish war vessels.	No. 562. District court.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 LIBEL.

[Filed Jul. 31, 1899.]

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, UNITED States Navy, commander in chief, in his own behalf, and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic Station, who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures, *v.* THE SPANISH VESSEL OF WAR "INFANTA Maria Teresa," and miscellaneous stores and supplies captured upon her and other Spanish war vessels.	No. 562. District court.

LIBEL.

To the honorable the supreme court of the District of Columbia, holding a special term for District court business:

William T. Sampson, a rear-admiral of the United States Navy,
2 and at all times hereinafter named the commander in chief of the United States naval force on the North Atlantic Station, in his own behalf, and also in behalf of all of the officers and enlisted men of the United States Navy who served with the said United States naval force and took part in a certain naval engagement hereinafter described

off Santiago de Cuba, on July 3, 1898, and in captures made subsequent thereto, and also, so far as he is by law permitted, on behalf of the United States, brings this, his libel, against all persons claiming any interest in the prize property hereinafter described and against the said property, in a cause of maritime prize, and respectfully shows:

I. That at all times during the months of June and July of 1898 and thereafter a fleet composed of part of the said United States naval force, acting under the immediate command of this libellant, as the commander in chief, remained off Santiago de Cuba. Commodore Winfield S. Schley, U. S. Navy was the commanding officer of a division of the said fleet, under the orders of this libellant, and Captain French E. Chadwick, U. S. Navy, was fleet captain or chief of staff.

II. Among other vessels, the said fleet included those next hereinafter named, all of them being vessels of the United States Navy, duly officered and manned, as such:

United States flagship "New York," commanded by Captain French E. Chadwick, U. S. Navy.

United States steamer "Brooklyn," commanded by Captain Francis A. Cook, U. S. Navy.

United States steamer "Texas," commanded by Captain John W. Philip, U. S. Navy.

United States steamer "Iowa," commanded by Captain Robley D. Evans, U. S. Navy.

United States steamer "Indiana," commanded by Captain Henry C. Taylor, U. S. Navy.

3 United States steamer "Oregon," commanded by Captain Charles E. Clark, U. S. Navy.

United States auxiliary cruiser "Gloucester," commanded by Lieut. Commander Richard Wainwright, U. S. Navy.

United States auxiliary cruiser "Hist," commanded by Lieut. Lucien Young, U. S. Navy.

United States torpedo boat "Ericsson," commanded by Lieut. Nathaniel R. Usher, U. S. Navy.

United States auxiliary cruiser "Vixen," commanded by Lieut. Alexander Sharp, jr., U. S. Navy.

III. That on or about July 3, 1898, a state of war then existing between the United States and the Kingdom of Spain, the said vessels of the United States Navy did capture from the King of Spain the armored cruiser "Infanta Maria Teresa" and a large quantity of naval stores and supplies and other property then upon the said cruiser, and upon other vessels of the King of Spain, to wit: The armored cruisers "Vizcaya," "Almirante Oquendo," and "Cristobal Colon," and the torpedo-boat destroyers "Pluton" and "Furor." The said stores, supplies, and other property consisted of torpedoes, guns, gun mounts, rifles, ammunition, search lights, coin, currency, and other miscellaneous articles. It is not now possible for this libellant to give a complete inventory of the said captured property.

IV. That the captures of the said "Infanta Maria Teresa" and other property were made during or as the result of a naval engagement which took place on or about July 3, 1898, off Santiago de Cuba between the vessels of the United States Navy aforesaid and a naval force of the

King of Spain then and there present, which consisted of the
4 armored cruisers "Infanta Maria Teresa," "Vizcaya," "Almirante Oquendo," and "Cristobal Colon," and the torpedo-boat destroyers "Pluton" and "Furor," and was supported by Spanish land batteries at or about the harbor of Santiago de Cuba, which took part in the said engagement. This libellant is informed and believes that the said naval force of the King of Spain, supported as aforesaid, was of force equal or superior to that of the said vessels of the United States Navy.

V. That the said "Infanta Maria Teresa" and other captured property hereinbefore mentioned, subsequent to her and its capture as aforesaid, were taken for and appropriated to the use of the United States, and all of the said property except the said "Infanta Maria Teresa" is now in the possession of the Secretary of the Navy or the proceeds of sales thereof are deposited in the Treasury of the United States, and for that reason no part of it has been or can be sent in for adjudication to any court of the United States. The said "Infanta Maria Teresa," after being taken for and appropriated to the use of the United States, and while in the possession of the United States, under the control of the Secretary of the Navy, being in charge of contractors employed by him, did, on or about October, 1898, sail from the port of Guantanamo de Cuba, bound for the port of Norfolk, in the State of Virginia, and while on the said voyage, to wit, on or about November 1, 1898, was abandoned at sea and drove ashore upon Cat Island. Thereafter the said "Infanta Maria Teresa" was duly surveyed by a board of officers, appointed by the Secretary of the Navy, which proceeded to Cat Island for that purpose, and pursuant to the report and recommendation of the said board was finally abandoned on or about November 20, 1898, and for that reason can not be sent in for adjudication to any court in the United States.

5 VI. That the said "Infanta Maria Teresa" and other captured property has been or will be duly surveyed, appraised, and inventoried, and this libellant prays that a copy of the said survey, appraisal, and inventory be returned to this court.

VII. That although more than three months have now elapsed since the capture aforesaid, no district has been designated by the Secretary of the Navy wherein proceedings should be instituted for the condemnation of the said captured property, as prize, or for the adjudication of the rights of this libellant and of the officers and men of the said vessels of the United States Navy, or of any person claiming to be entitled to the said property; wherefore the premises aforesaid are within the jurisdiction of this honorable court, holding a special term, with the jurisdiction of a district court of the United States.

In consideration whereof, this libellant prays:

1. That a monition in due form of law may be issued by this court to the honorable the Secretary of the Navy, and the attorney of the United States for this district, and to such other persons as this court shall order to be notified, commanding them to appear herein and show cause, if any they have, why judgment or decree of condemnation in prize should not be entered, whereby all of the said captured property shall be condemned as prize to this libellant and the officers and men of the said vessels under his command, in accordance with sec. 4630 of the Revised Statutes of the United States.

2. That a copy of this libel be served upon the attorney of the United States for this district, and that another copy thereof be served upon the honorable the Secretary of the Navy, and a rule be laid upon him to show cause, if any he has, why the value of the said captured
6 property, shown or which may be shown by the survey, appraisal and inventory, should not be deposited with the Treasurer or the assistant treasurer of the United States nearest to the place of the session of this court, subject to the order of the court to be entered in this cause.

3. That this libellant and the officers and enlisted men of the said vessels of the United States Navy, under his command, as aforesaid, have such other and further relief and redress as this honorable court is competent to give in the premises.

4. That a day may be set on or before which all persons claiming an interest herein shall appear and answer this libel.

WILLIAM T. SAMPSON.

JOS. K. MCCAMMON,
JAMES H. HAYDEN,
Proctors for libellant.

WEBB & WEBB,
CHARLES & WILLIAM B. KING,
Of counsel for a number of officers and men of the said force.

STATE OF NEW JERSEY,
County of Essex, ss:

William T. Sampson, being duly sworn, deposes and says that he is the libellant named in and who subscribed the foregoing libel; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be on his information and belief, and that as to those matters he believes it to be true.

WILLIAM T. SAMPSON.

Subscribed and sworn to before me the sixteenth day of July, A. D. 1899.

[SEAL.]

NATHAN RUSSELL,
Notary Public.

7 ORDER FOR PROCESS, &C.

[Filed Aug. 1, 1899.]

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. NAVY, commander in chief, in his own behalf and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic Station who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures, *vs.* THE SPANISH VESSEL OF WAR "INFANTA MARIA Teresa" and miscellaneous stores and supplies captured upon her and other Spanish war vessels.	District court. No. 562.

On reading the libel of William T. Sampson, filed herein, and on motion of McCammon & Hayden, proctors for the said libellant:

It is hereby ordered that process issue as prayed in the said libel to the Secretary of the Navy and the attorney of the United States for this district; that copies of said libel, with copies of this order, be served upon the attorney of the United States for this district and upon the Secretary of the Navy.

That the Secretary of the Navy appear herein at ten o'clock a. m. on the 22nd day of August, 1899, at a special term of this court, then to be held for district court business, and show cause, if any he have, why the value of the captured property described in the said libel, as shown, or as it may be shown, by the survey, appraisal, and inventory in the said libel mentioned should not be deposited with the Treasurer or assistant treasurer of the United States nearest to the place of the session of this court, subject to an order of court to be entered herein.

It is further ordered that publication be made of the substance of the said libel and of this order in the Law Reporter, published in the District of Columbia, such publication to be made once in each week for three consecutive weeks, and that a copy of the same be posted in
8 a conspicuous place in this court-house.

That on or about the 22nd day of August, 1899, any and all persons claiming an interest in the said captured property or in the determination of this suit, or knowing any cause why a degree should not be entered herein as prayed, are commanded to appear herein and make answer unto this libel.

CHARLES C. COLE,
Associate Justice.

Marshal's return.

Served copy of the within order on Henry E. Davis, attorney of the United States for the District of Columbia, and on Charles H. Allen, Acting Secretary of the Navy, August 2, 1899.

AULICK PALMER,
Marshal.

C.

9 MONITION.

[Issued Aug. 1st, 1899.]

In the supreme court of t'e District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. Navy, commander in chief, in his own behalf and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic station who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures,

vs.

THE SPANISH VESSEL OF WAR "INFANTA Maria Teresa" and miscellaneous stores and supplies captured upon her and other Spanish war vessels.

} District court. No. 562.

UNITED STATES OF AMERICA,
District of Columbia, ss:

The President of the United States of America to the marshal of said District, greeting:

Whereas a libel has been filed in the supreme court of the District of Columbia on the 31st day of July, in the year of our Lord one thousand eight hundred and ninety-nine, by William T. Sampson, rear-admiral, U. S. Navy, commander in chief, in his own behalf and in behalf of the officers and enlisted men of the United States naval force on the North Atlantic Station who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and in subsequent captures, and, so far as the law permites, in behalf of the United States, in a cause of maritime prize, against the Spanish vessel of war "Infanta Maria Teresa" and miscellaneous naval stores and supplies captured upon her and other Spanish war vessels for the reasons and causes in said libel mentioned, and praying the usual process and monition of this court in that behalf to be made, and that all persons interested in the said prize property may be cited in general and special to answer the premises, and, due proceedings being had, that for the causes in the said libel mentioned a sum equal to the value of the said prize property, as the same has been or as it shall be ascer'ained in accordance with law, be deposited by the hon-
10 orable the Secretary of the Navy with the Treasurer or assistant treasurer of the United States nearest to the place of the sessions of this court, subject to the order of this court herein, and be distributed as prize money in accordance with law among this libellant and the officers and enlisted men in behalf of whom he has filed this libel.

You are hereby commanded to give due notice to the honorable the Secretary of the Navy and the attorney of the United States for the District of Columbia that they appear before the said court, holding a special term as a district court of the United States in and for the District of Columbia, on Tuesday, the 22nd day of August, 1899, at ten

o'clock in the forenoon, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the said prize property and make their allegations in that behalf, and what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 1st day of August, 1899, in the 123d year of the independence of the United States.

[SEAL.] JOHN R. YOUNG,
Clerk.

Marshal's return.

Served copy of the within monition on Henry E. Davis, attorney of the United States for the District of Columbia, and on Charles H. Allen, Acting Secretary of the Navy, August 2, 1899.

AULICK PALMER,
Marshal.

C.

11 ADVERTISEMENT.

[Filed, Aug. 1, 1899.]

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. Navy, commander in chief, in his own behalf and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic station, who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures, *vs.* THE SPANISH VESSEL OF WAR "INFANTA Maria Teresa," and miscellaneous stores and supplies captured upon her and other Spanish war vessels.	District court, No. 562.

To all whom it may concern:

Notice is hereby given that the libel of William T. Sampson, filed in the above-entitled cause on the 31st day of July, 1899, in substance shows:

That on and after July 3, 1898, the Spanish vessel of war "Infanta Maria Teresa," and miscellaneous stores and supplies upon her and upon other Spanish war vessels, were captured by a fleet of armed vessels of the United States Navy composed of the United States flagship "New York" and the United States steamers "Brooklyn," "Texas," "Iowa," "Indiana," "Oregon," "Gloucester," "Hist," "Ericsson," and "Vixen."

The said fleet formed a part of the United States naval force on the North Atlantic station, and was under the immediate command of the libellant, W. T. Sampson, rear-admiral, U. S. Navy, as commander in chief, Winfield S. Schley, commodore, U. S. Navy, being the commanding officer of a division of the said fleet under the orders of the libellant, and Captain French E. Chadwick, U. S. Navy, being the fleet captain.

The said captures were made in or as a result of a naval engagement which took place off Santiago de Cuba on July 3, 1898, between the said United States vessels and a Spanish naval force, which was then and there supported by Spanish land batteries; the said Spanish naval
12 force thus supported being of force equal or superior to that of the said United States vessels.

The said "Infanta Maria Teresa" and other property were and are lawful prize of war and subject to condemnation as such, but, from time to time, subsequent to the capture thereof, were taken for and appropriated to the use of the United States, wherefore they have not been and can not be sent in for adjudication to any prize court.

The said libel prays that the said "Infanta Maria Teresa," and other captured property, be adjudged lawful prize of war and a decree be entered herein ordering and directing that the value of the said vessel and other captured property be deposited by the Secretary of the Navy with the Treasurer or Assistant Treasurer of the United States, subject to the order of this court, and distributed among the officers and enlisted men of the United States Navy who took part in the said captures.

All persons claiming an interest in the said prize property or interested in the determination of this suit, or knowing any cause why a decree should not be entered and such distribution made as prayed in this libel, are admonished to appear before a special term of this court, to be holden for district court business in the city of Washington, District of Columbia, at ten o'clock a. m., on the 22d day of August, 1899, and then and there to interpose a claim to the said property or make answer unto this libel.

CHAS. C. COLE, *Asso. Justice.*

Marshal's return.

Posted a copy of the within advertisement in a conspicuous place in the U. S. court-house, D. C., August 2, 1899.

AULICK PALMER,
Marshal.

C.

(Indorsed:) Dist. Ct., No. 562. Wm. T. Sampson *v.* "Inf. Maria Teresa," &c. Notice.

13 PROOF OF PUBLICATION.

[Filed Aug. 21, 1899.]

Supreme court, District of Columbia, this 19 day of August, 1899.

WM. T. SAMPSON ET AL.,
vs.
THE SPANISH VESSEL OF WAR "Infanta Maria Teresa."
} Supreme court, No. 562. Docket No. .

Affidavit.

DISTRICT OF COLUMBIA, *to wit:*

Personally appeared before me, a notary public, in and for the said District, M. W. Moore, well known to me to be the manager of "The

Washington Law Reporter," a weekly newspaper printed and published in the city of Washington and District aforesaid, and made oath in due form of law that the annexed notice was published in said newspaper once a week for three successive weeks as per certificate in the margin hereto.

Witness my hand and official seal this 19 day of August, 1899.

[SEAL.] FRED. W. MOORE,
Notary Public, D. C.

Copy of notice.

[McCammon & Hayden, Webb & Webb, and Chas. & Wm. B. King, proctors.]

In the supreme court of the District of Columbia.

William T. Sampson, rear-admiral, U. S. Navy, commander in chief, in his own behalf and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic station, who took part in the naval engagement off Santiago de Cuba, on July 3, 1898,
14 and subsequent captures, v. The Spanish vessel of war "Infanta Maria Teresa" and miscellaneous stores and supplies captured upon her and other Spanish war vessels. District court, No. 562.

To all whom it may concern: Notice is hereby given that the libel of William T. Sampson, filed in the above-entitled cause on the 31st day of July, 1899, in substance shows: That on and after July 3, 1898, the Spanish vessel of war "Infanta Maria Teresa" and miscellaneous stores and supplies upon her and upon other Spanish war vessels were captured by a fleet of armed vessels of the United States Navy composed of the United States flag-ship "New York," and the United States steamers "Brooklyn," "Texas," "Iowa," "Indiana," "Oregon," "Gloucester," "Hist," "Ericsson," and "Vixen." The said fleet formed a part of the United States naval force on the North Atlantic station, and was under the immediate command of the libelant, W. T. Sampson, rear-admiral, U. S. Navy, as commander in chief; Winfield S. Schley, commodore, U. S. Navy, being the commanding officer of a division of the said fleet under the orders of the libelant, and Captain French E. Chadwick, U. S. Navy, being the fleet captain. The said captures were made in or as a result of a naval engagement which took place off Santiago de Cuba on July 3, 1898, between the said United States vessels and a Spanish naval force, which was then and there supported by Spanish land batteries; the said Spanish naval force thus supported being of force equal or superior to that of the said United States vessels. The said "Infanta Maria Teresa" and other property were and are lawful prize of war and subject to condemnation as such, but, from time to time, subsequent to the capture thereof were taken for and appropriated to the use of the United States, wherefore they have not been and can not
15 be sent in for adjudication to any prize court. The said libel prays that the said "Infanta Maria Teresa" and other captured property be adjudged lawful prize of war and a decree be entered herein ordering and directing that the value of the said vessel and other captured property be deposited by the Secretary of the Navy with the Treasurer or assistant treasurer of the United States, subject to the order of this court, and distributed among the officers and enlisted men

of the United States Navy who took part in the said captures. All persons claiming an interest in the said prize property, or interested in the determination of this suit, or knowing any cause why a decree should not be entered and distribution made as prayed in this libel, are admonished to appear before a special term of this court to be holden for District court business in the city of Washington, District of Columbia, at 10 o'clock a. m. on the 22d day of August, 1899, and then and there to interpose a claim to the said property or make answer unto this libel.

CHAS. C. COLE, *Asso. Justice.*

Jos. K. McCammon and James H. Hayden, proctors for libelant. Webb & Webb, Chas. & Wm. B. King, of counsel for a number of officers and enlisted men.

I hereby certify that the foregoing legal notice was printed and published in the regular issues of The Washington Law Reporter, a weekly newspaper, bearing date August 3, 10, 17, 1899.

M. W. MOORE,
General Manager of the Law Reporter Co. of Washington City.

16 MOTION FOR RULE ON SECRETARY OF NAVY.

[Filed Dec. 1, 1899.]

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, United States Navy, commander in chief, in his own behalf and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic Station who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures,

v.

THE SPANISH VESSEL OF WAR "INFANTA Maria Teresa" and miscellaneous stores and supplies captured upon her and other Spanish war vessels.

No. 562. District court.

Now comes the libellant in the above-entitled cause and shows the court that, after the capture of the Spanish armored cruiser "Infanta Maria Teresa" and the naval stores and supplies and other property, as set forth in the third paragraph of the libel, and after the said captured vessel and the naval stores and supplies had been taken for the use of the United States, prior to coming into the custody of this or any other prize court, as set forth in the fifth paragraph of the libel, the said vessel and naval stores and supplies were duly surveyed, appraised, and inventoried, pursuant to section 4624 of the Revised Statutes of the United States, and that a report of a board duly appointed in the premises, which contains the record of the said survey, appraisal, and inventory, is now on file in the Navy Department; all of which facts more fully

appear from two letters of the Acting Secretary of the Navy and Secretary of the Navy, bearing date October 16 and November 2, 1899, respectively, which are hereunto annexed.

Wherefore the libellant prays the court to lay a rule upon the honorable the Secretary of the Navy to send the said survey,
17 appraisement, and inventory to this court.

McCAMMON & HAYDEN,
Proctors for Libellant.

Due service of the foregoing motion is hereby acknowledged this 16th day of January, 1900.

CHARLES C. BINNEY,
Special Attorney.

No objection to the issuance of the rule as above prayed for will be made on the part of the United States.

CHARLES C. BINNEY,
Special Attorney.

18 6623–99.

NAVY DEPARTMENT,
Washington, October 16, 1899.

E. P. H.

GENTLEMEN: The Board of Inspection and Survey, having been directed by the Department to make an appraisal of the value of the "Infanta Maria Teresa" at the time she was raised by the Merritt and Chapman Derrick and Wrecking Company, and also of the value of all property recovered from the Spanish vessels sunk in the vicinity of Santiago and not raised, has submitted its report, as follows:

Value of "Infanta Maria Teresa" when raised, $652,497.

Value of property recovered from Spanish vessels not raised, $29,367.

The Department has called for reports showing the cost to the Government of the recovery of the vessel and property above mentioned.

Very respectfully,

CHAS. H. ALLEN,
Acting Secretary.

Messrs. McCAMMON AND HAYDEN,
1420 F Street N. W., Washington, D. C.

19 6623–99.

NAVY DEPARTMENT,
Washington, November 2, 1899.

E. P. H.

GENTLEMEN: Referring to previous correspondence on the subject of the appraisal of the "Infanta Maria Teresa," you are advised that the Department is in receipt of a report from the Bureau of Supplies and Accounts containing information respecting the expenditures incurred by the United States in the recovery of that vessel, as follows:

1. Respectfully returned to the Department with the information that there has been paid on account of wrecking Spanish vessels near Santiago de Cuba the sum of $234,158.10; not including the amount ($75,000) paid for delivering the "Reina Mercedes" at navy-yard, Norfolk.

2. From the correspondence on file in the Bureau from officers in charge of the wrecking operations from time to time, it appears that with the exception of the first month's services of the steamers "I. J. Merritt"

and "Senior," amounting to $45,484.20, operations were confined almost exclusively to the "Maria Teresa;" and it is therefore suggested that the balance of the expenditure, say, $188,673.90, is a fair approximation to the cost of work on that vessel.

3. The Bureau has no means of obtaining any information regarding the cost of recovering the property, appraised at $29,367.00 and referred to it in 3d paragraph of the report of the Board of Inspection & Survey, no payments having been made for such services other than as they formed a part of general wrecking operations.

Very respectfully,

JOHN D. LONG, *Secretary.*

Messrs. McCAMMON AND HAYDEN,
1420 F Street N. W., Washington, D. C.

20 RULE ON SECRETARY OF THE NAVY.

[Filed Jan. 19, 1900.]

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, United States Navy, commander in chief, in his own behalf, and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic Station who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures,

v.

THE SPANISH VESSEL OF WAR "INFANTA Maria Teresa" and miscellaneous stores and supplies captured upon her and other Spanish war vessels.

No. 562. District court.

This cause came on to be heard upon the libellant's motion for a rule upon the honorable Secretary of the Navy to send to this court the survey, appraisement, and inventory of the Spanish armored cruiser "Infanta Maria Teresa" and naval stores and supplies described in the libel herein, and the consent thereunto of the United States, and was argued by counsel, and thereupon, on consideration thereof, it is therefore, this 19 day of January, 1900, adjudged and ordered that the honorable the Secretary of the Navy send the said survey, appraisement, and inventory to this court, pursuant to section 4624 of the Revised Statutes of the United States.

A. B. HAGNER,
Associate Justice of the Supreme Court of the District of Columbia, sitting as a United States District Court.

Marshal's return.

Served copy of within order on John D. Long, Secretary of the Navy, January 20, 1900.

AULICK PALMER,
Marshal.

B.

21 ANSWER OF THE UNITED STATES.

[Filed Jan. 8, 1900.]

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. Navy, commander in chief, in his own behalf, and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic Station who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures,	District court. No. 562.
v.	
THE SPANISH VESSEL OF WAR "INFANTA Maria Teresa" and miscellaneous stores and supplies captured upon her and other Spanish war vessels.	

IN PRIZE.

The answer of the United States.

To the honorable the supreme court of the District of Columbia, holding a special term for district court business.

The Attorney-General, in behalf of the United States, now the lawful owner of all the property sought to be condemned as prize in the above-entitled cause, reserving all objections and exceptions whatsoever, answers the libel filed in this cause, and the intervening petition of Joseph G. Eaton, commander, United States Navy, also filed in this cause, as follows:

22

I and II. The averments contained in the first two sections of the libel are true.

III. It is true that on or about July 3, 1898, a state of war existed between the United States and the Kingdom of Spain, but the Attorney-General denies that the libellant and the vessels under his command captured from the King of Spain the armored cruiser "Infanta Maria Teresa" and a large quantity of naval stores, supplies, and other property then upon the said cruiser, and upon other vessels of the King of Spain, to wit, the armored cruisers "Vizcaya," "Almirante Oquendo," and "Cristobal Colon," and the torpedo-boat destroyers "Pluton" and "Furor," as averred in the third section of said libel; and the Attorney-General avers that all the hereinabove-named vessels of the King of Spain were sunk or destroyed on or about July 3, 1898, by the libellant and the vessels under his command, so that neither any of the said vessels of the King of Spain, nor any naval stores, supplies, or other property upon the same, could become the subject of condemnation in prize to the libellant and the officers and crews of the vessels under his command.

IV. The sinking or destruction of the hereinabove-named vessels of the King of Spain occurred during, or as the result of, a naval engagement which took place on or about July 3, 1898, off Santiago de Cuba

between the vessels of the United States Navy, under the command of libellant, and the hereinabove-named vessels of the King of Spain,
23 but the Attorney-General denies that the said naval forces of the King of Spain, supported by any land batteries, to the fire of which the said vessels of the United States Navy were exposed during the said engagement, was of force equal or superior to that of the said vessels of the United States Navy.

V. After the sinking or destruction of the hereinabove-named vessels of the King of Spain, the "Infanta Maria Teresa" was raised by the United States, and at its own cost, and property of various kinds was recovered therefrom and from the wrecks of the other hereinabove-named vessels of the King of Spain, by the United States and at its own cost; and the said "Infanta Maria Teresa" and all of the said property were taken for and appropriated to the use of the United States, and all of the said property except the said "Infanta Maria Teresa" is now in the possession of the United States, or the proceeds of sales thereof are deposited in the Treasury of the United States, and for that reason no part of it has been or can be sent in for adjudication to any court of the United States. The averment in the fifth section of the libel as to the subsequent loss of the said "Infanta Maria Teresa," after it was raised by the United States is true.

VI. The said "Infanta Maria Teresa" and the other property sought to be condemned as prize in this cause have been duly surveyed, appraised, and inventoried, and a copy of the said survey, appraisal, and inventory can be furnished in response to an order of this court.

VII. The averments contained in the seventh section of the libel are true except in this: That the property therein referred to was not captured as prize, but was recovered after it had been sunk in action, or
24 was recovered from the wrecks of vessels sunk in action, as stated in the third section of this answer; but the Attorney-General admits that the issues raised by the libel in this cause and by this answer are within the jurisdiction of this honorable court, holding a special term with the jurisdiction of a district court of the United States.

And the Attorney-General insists upon all the above-stated matters of defense in law as if the United States had availed itself thereof by demurrer.

Wherefore the Attorney-General prays that the libel filed in this cause be dismissed, and that the United States be allowed all its costs and charges in this behalf sustained.

JOHN W. GRIGGS,
Attorney-General.

25 REPLICATION.

[Filed Jan. 12, 1900.]

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. Navy, commander in chief, in his own behalf and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic station who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures,
v.
THE SPANISH VESSEL OF WAR "INFANTA Maria Teresa" and miscellaneous stores and supplies captured upon her and other Spanish war vessels.
} District court. No. 562.

Now comes the libellant and joins issue on the answer of the United States in the above-entitled cause.

JOS. K. MCCAMMON,
JAMES H. HAYDEN,
Proctors for Libellant.

(Indorsed:) District court. No. 562. William T. Sampson, rear-admiral, v. "Infanta Maria Teresa," etc. Copy. Replication. Filed January 12, 1900. McCammon & Hayden.

26 ANSWER OF THE SECRETARY OF THE NAVY.

[Filed Apr. 25, 1900.]

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, United States Navy, commander in chief, in his own behalf and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic station who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures,
v.
THE SPANISH VESSEL OF WAR "INFANTA Maria Teresa" and miscellaneous stores and supplies captured upon her and other Spanish war vessels.
} No. 562. District court.

The answer of the Secretary of the Navy.

To the honorable the justices of the supreme court of the District of Columbia, holding a special term with the jurisdiction of a United States district court:

The Secretary of the Navy, in compliance with the rule of this court, which has been duly served upon him, requiring him to show cause, if

any he have, why the prayer of the libel in this case should not be granted, respectfully calls the attention of the court to the answer which has been made by the Attorney-General in behalf of the United States to the said libel (which answer was filed on the 8th day of January last), and declares his full concurrence in the said answer, and requests that the same may be taken as his answer to the libel filed in this cause and to the rule of this honorable court.

JNO. D. LONG,
The Secretary of the Navy.

27 REPLICATION TO ANSWER OF THE SECRETARY OF NAVY.

[Filed Jul. 2, 1900.]

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. Navy, commander in chief, in his own behalf and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic station who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures,
v.
THE SPANISH VESSEL OF WAR "INFANTA Maria Teresa" and miscellaneous stores and supplies captured upon her and other Spanish war vessels.
} District court. No. 562.

Now comes the libellant and joins issue on the answer of the Secretary of the Navy in the above-entitled cause.

MCCAMMON & HAYDEN,
Proctors for Libellant.

(Indorsed:) In the supreme court of the District of Columbia. William T. Sampson, rear-admiral, etc., libellant, vs. The Spanish vessel of war "Infanta Maria Teresa." Replication to answer of Secretary of the Navy. McCammon & Hayden, proctors for libellant.

In the Supreme Court of the District of Columbia.

No. 562, District Court. In Prize.

WILLIAM T. SAMPSON, REAR-ADMIRAL, UNITED STATES NAVY, ETC., LIBELLANT, v. THE SPANISH VESSEL OF WAR "INFANTA MARIA TERESA," ETC.

DEPOSITIONS AND OTHER EVIDENCE PRINTED UNDER STIPULATION OF THE PARTIES, FILED DECEMBER 12, 1900.

INDEX.

	Page.
Appraisement of *Infanta Maria Teresa*, etc	1
Extracts from log of U. S. S. *Vulcan*	3
Order convening naval court of inquiry, November 17, 1898	9
Telegram of Ira Harris to Secretary of the Navy, November 5, 1898	11
Findings of naval court of inquiry, December 2, 1898	13
Contract of Merritt and Chapman Derrick and Wrecking Company with the United States, July 6, 1898	15
Dispatch of Allen (Acting Secretary of Navy) to Commodore J. C. Watson, U. S. N., August 27, 1898	18
Report of Commander Ira Harris, U. S. N., September 28, 1898	18
Report of J. W. Chittenden, October 4, 1898	20
Report of Commander Ira Harris, U. S. N., October 18, 1898	20
Orders of Capt. C. M. Chester, U. S. N., to commanding officer, U. S. S. *Leonidas*, October 27, 1898	23
Order of Capt. C. M. Chester, U. S. N., to Commander Ira Harris, U. S. N., October 29, 1898	23
Report of Capt. C. M. Chester, U. S. N., October 31, 1898	24
Report of Lieut. George P. Blow, U. S. N., November 3, 1898	26
Deposition of Capt. French E. Chadwick, U. S. N. (for libellant)	31
Deposition of Lieut. Commander Sidney A. Staunton, U. S. N. (for libellant)	43
Deposition of Gardiner C. Sims (for the United States)	56
U. S. Exhibit A	68
Deposition of Capt. C. M. Chester, U. S. N. (for the United States)	68
U. S. Exhibit B	81
Deposition of Ira Harris (for the United States)	82
U. S. Exhibit C	96
Certificate to depositions for the United States	97

Appraisement of Infanta Maria Teresa, etc.

Navy Department,
Board of Inspection and Survey,
Washington, October 10, 1899.

Sir: 1. In obedience to your order No. 4593, of July 13th, 1899, a copy of which is appended, marked "A," directing the Board of Inspection and Survey to make an appraisal of the value of the *Infanta Maria*

Teresa at the time she was raised by the Merritt & Chapman Derrick and Wrecking Company, and also of the value of all property recovered from the Spanish vessels in the vicinity of Santiago, it has the honor to submit the following report:

2. For the appraisal of the value of the *Infanta Maria Teresa* at the time she was raised this board was furnished by the Bureau of Navigation with the names of all parties who were in any way connected with the floating of said vessel. The board has communicated with all the parties named who are not in any manner interested in the result of the appraisal and, as a result of the information thus obtained after a thorough investigation, decides that the value of the *Infanta Maria Teresa* at the time said vessel was raised was six hundred and fifty-two thousand four hundred and ninety-seven dollars ($652,497.00), and that such appraisal is, in the judgment of said board, an equitable valuation for the Government and for the officers and men whose interests are involved.

The above appraisal is based upon all the information obtainable from disinterested parties up to the present time.

3. The appraisal by this board of the value of all property recovered from the Spanish vessels which were sunk off Santiago, Cuba, during the recent war with Spain, and not subsequently raised, is based upon information received from the bureaus of the Navy Department, from the navy-yards, and from the Naval Academy. After exhausting all obtainable information the Board of Inspection and Survey concludes that the sum of twenty-nine thousand three hundred and sixty-seven dollars ($29,367.00) is a fair valuation of said recovered property.

4. Recapitulation of appraisals.

Value of the *Infanta Maria Teresa* when raised	$652,497.00
Value of recovered property from Spanish vessels not raised	29,367.00
Total of appraisals	681,864.00

5. In accordance with the instructions of the Secretary of the Navy the papers furnished the board by the Department for its information are respectfully returned herewith.

We have the honor to be, very respectfully,

FRED RODGERS, *Rear-Admiral, U. S. N.,*
President Board of Inspection and Survey.
W. H. EMORY, *Commander, U. S. N.*
C. H. ROELKER, *Commander, U. S. N.*

The honorable The SECRETARY OF THE NAVY.

[1st endorsement.]

No. 6623–99. NAVY DEPARTMENT, *October 16, 1899.*

Subject: Report of Board of Inspection and Survey, appraising *Infanta Maria Teresa* and certain property recovered from Spanish vessels sunk during the war with Spain off Santiago, Cuba.

Referred to the Bureau of Supplies and Accounts for report as to the cost of the raising and delivery to the United States of the *Infanta Maria Teresa*, together with such information as the Bureau may possess or be able to obtain respecting the cost of the recovery of the property, appraised

at $29,367, referred to in the 3d paragraph of the within report of the Board of Inspection and Survey.

CHAS. H. ALLEN,
Acting Secretary.

[2d endorsement.]

No. 37919. BUREAU OF SUPPLIES AND ACCOUNTS,
October 23, 1899.

Subject: Cost of raising the *Maria Teresa* and recovering property from Spanish wrecks.

1. Respectfully returned to the Department with the information that there has been paid on account of wrecking Spanish vessels near Santiago de Cuba the sum of $234,158.10, not including the amount ($75,000) paid for delivering the *Reina Mercedes* at navy-yard, Norfolk.

2. From the correspondence on file in the Bureau from officers in charge of the wrecking operations from time to time it appears that with the excepting of the first month's services of the steamers *I. J. Merritt* and *Senior*, amounting to $45,484.20, operations were confined almost exclusively to the *Maria Teresa*, and it is therefore suggested that the balance of the expenditure, say $188,673.90, is a fair approximation to the cost of work on that vessel.

3. The Bureau has no means of obtaining any information regarding the cost of recovering the property appraised at $29,367.00 and referred to in 3d paragraph of the report of the Board of Inspection and Survey, no payments having been made for such services other than as they formed a part of general wrecking operations.

GEORGE W. SIMPSON,
Acting Chief of Bureau.

Extracts from the log of the U. S. S. Vulcan.

MONDAY, *September 19, 1898.*

8 a. m. to meridian, standing along the coast towards wrecks. 10 a. m., lying to off and on abreast of *Maria Teresa*. Meridian to 4 p. m., keeping position near the wrecks. Sent to the wreck of the *Almirante Oquendo* four boats with men to inspect. 4 to 6 p. m., standing off the wrecks at the beginning of the watch. Hoisted in boats. Got under way heading to westward toward wreck of *Christobal Colon*. * * * 6 to 8 p. m. * * * Standing along south coast toward *Colon*.

TUESDAY, *September 20th, 1898.*

At 5.30 started engines heading in towards Tarquino peaks and wreck of *Colon*. 7.15 stopped engines and lowered gig. A board of survey, consisting of Lieut. Comdr. Harris, Chf. Engineer J. H. Chasmer, and Chief Engineer G. C. Sims visited wreck of *Colon*. At 8.55 changed course to E. Sighted the wreck of the *Viscaya* at 11 a. m. Stood in towards it and stopped the engines at 11.30. Sent visiting party to the wreck in three boats. Meridian to 4 p. m. lying to off wreck of *Viscaya* at the beginning of watch. Called boats at 1.10. Hoisted in all boats and got under way for Guantanamo Bay. * * * Noted the following distances: *Viscaya* to *Maria Teresa* 9 miles. * * * *Maria Teresa* to Morro Castle, 6.3 miles. * * *

FRIDAY, *September 23rd, 1898.*

* * * At daylight made flagship *Newark* right ahead. Other vessels in company: U. S. S. *Scorpion*, *Alvarado*, and *Potomac*. At sunrise American ensign hoisted at main of *Maria Teresa*. Flagship and other vessels also hoisted ensigns. * * * 8 a. m. to 12 noon. * * * At 9.50 the *Maria Teresa* was towed off, with all of the fleet whistles blowing. At 10.15 the flagship signaled the fleet to fire a salute of 21 guns in succession in order of rank, which was fired by *Newark*, *Scorpion*, *Alvarado*. Hoisted in tin cutter and got under way, convoying the *Maria Teresa* by order of the flagship at 10.40. Meridian to 4 p. m. * * * Convoying *Maria Teresa* to Guantanamo Bay with *Newark*, *Scorpion*, *Alvarado*, *Potomac*, and wrecking tugs. 4 to 6 p. m. * * * Convoying *Maria Teresa* to Guantanamo Bay. Light breeze from N. E. *Alvarado* picked up a boat dropped by *Maria Teresa*, tug *Chapman* another. 6 p. m. to 8. p. m. * * * Flagship signaled "Follow the wreck and anchor near her for the night." Came to anchor in the entrance of Guantanamo Bay at 7.05 p. m. Raised anchor and got under way again at 7.20, following the movements of the wreck.

SATURDAY, *September 24th, 1898.*

* * * Machine-shop force working on the *Maria Teresa* and repair work for the fleet. * * *

SUNDAY, *September 25th, 1898.*

At 5.30 p. m. *Manati* brought down a party of Cubans (28) for carrying on work on *Maria Teresa*. * * *

MONDAY, *September 26th, 1898.*

Warm and rainy. Machine-shop force engaged in general repair work and on the *Maria Teresa*. * * *

TUESDAY, *September 27th, 1898.*

Clear and pleasant. Sent working parties to *Maria Teresa*, *Sandoval*, *Scorpion*, and *Potomac*. * * *

WEDNESDAY, *September 28th, 1898.*

Clear and pleasant. Machine-shop force working on the *Maria Teresa*, *Sandoval*, *Potomac*, and *Hist*. * * *

THURSDAY, *September 29th, 1898.*

Clear and warm. Sent working parties to *Maria Teresa*, *Sandoval*, *Potomac*, and *Hist*. * * *

FRIDAY, *September 30th, 1898.*

Rainy weather. Sent working parties to the *Maria Teresa*, *Sandoval*, and *Potomac*. * * *

SATURDAY, *October 1st, 1898.*

Clear and pleasant. Sent working parties to *Maria Teresa* and *Sandoval*. * * *

SUNDAY, *October 2nd, 1898.*

Clear and fair. Working parties from the flagship, *Hist*, and *Potomac* reported for instructions as to the work on *Maria Teresa*. * * *

MONDAY, *October 3rd, 1898.*

Clear and pleasant. Sent working parties to *Maria Teresa* and *Potomac*. The following additional vessels commenced sending working parties to the *Teresa: Newark, Glacier, Leonidas, Hist*, and *Potomac*. * *

TUESDAY, *October 4th, 1898.*

* * * Sent working parties to the *Maria Teresa, Sandoval*, and *Potomac*.

WEDNESDAY, *October 5th, 1898.*

* * * Sent working party to *Teresa*, as usual.

THURSDAY, *October 6th, 1898.*

* * * Sent working parties to the *Maria Teresa*.

FRIDAY, *October 7th, 1898.*

* * * Sent working parties to *Maria Teresa*, as usual.

SATURDAY, *October 8th, 1898.*

* * * Sent working parties to the *Maria Teresa*.

MONDAY, *October 10th, 1898.*

* * * Sent working parties to the *Maria Teresa*.

TUESDAY, *October 11th, 1898.*

* * * Sent usual working party to *Teresa*, as usual.

WEDNESDAY, *October 12th, 1898.*

* * * Sent usual working party to *Maria Teresa*.

THURSDAY, *October 13th, 1898.*

* * * Sent usual working party to *Maria Teresa*.

FRIDAY, *October 14th, 1898.*

* * * Sent usual working party to the *Maria Teresa*.

SATURDAY, *October 15th, 1898.*

* * * Sent usual working party to *Maria Teresa*.

SUNDAY, *October 16, 1898.*

* * * Received the following men from *Newark*, with bags and hammocks, for duty on *Maria Teresa*: W. Hoffman, Mach., 2 cl.; C. W. Corson, Mach., 2 cl.; A. G. Bates, Mach., 2 cl.; E. Reilly, C. P.; F. Zeno, C. P.; C. Russell, C. P.; N. Auston, F., 2 cl.; H. J. Franklin, F., 2 cl.

TUESDAY, *October 18, 1898.*

* * * Sent usual working party to *Maria Teresa*.

WEDNESDAY, *October 19, 1898.*

* * * Sent usual working party to the *Maria Teresa.*

THURSDAY, *October 20th, 1898.*

* * * Sent usual working party to *Maria Teresa.*

FRIDAY, *October 21st, 1898.*

* * * Sent usual working party to *Maria Teresa.* * * * Jerome Gray, fireman, 2nd class, was transferred to this ship from the *Potomac,* for passage north on *Teresa.*

SATURDAY, *October 22nd, 1898.*

* * * Sent usual working party to the *Teresa.*

MONDAY, *October 24th, 1898.*

* * * Sent usual working party to *Maria Teresa.* The *Manati* took the *Talopa* alongside *Teresa* to coal.

TUESDAY, *October 25th, 1898.*

* * * Sent usual working party to *Teresa.*

WEDNESDAY, *October 26th, 1898.*

* * * Sent usual working party to the *Teresa.*

OCTOBER 27TH (THURSDAY).

* * * Sent usual working party to *Teresa.* * * * Sent night working party to the *Teresa.* Wrecking tug *Merritt* came alongside, bringing chain for bridle. The *Manati* brought lighter alongside at 6 p. m.

FRIDAY, *October 28th, 1898.*

* * * Sent usual working party to *Teresa,* and transferred men assigned to her.

SATURDAY, *October 29th, 1898.*

6.35 a. m.—Ira Harris, lieut. comd'r, commanding, left the ship.

6.40 a. m.—U. S. S. *Sandoval* got under way.

7.45 a. m.—Hove up anchor and got under way. Swung ship to best compasses and came to anchor in lower bay.

At 11.45 a. m. hove up anchor and took position on port bow of *Infanta Maria Teresa* and let go anchor with 25 fathoms of chain to water's edge. At 12 m. made line from *Teresa* fast to port quarter bitts. At 9 a. m. lighted fires in boilers C. & D. * * * At 3.45 shackled towing line to bridle. Hoisted steam launches. At 5.30 p. m. up anchor, and, with tug *Merritt* ahead, steamed out of Guantanamo Bay with *Infanta Maria Teresa* in tow. At 7.10 took departure from Eastern Point, bearing northwest, distant about 2 miles. Course east by standard compass. Put over patent log at 8 p. m., reading 11.2. Point "Malano" bearing NE., distant 8 miles. At 8.12 p. m., cloudy weather, stiff breeze from ENE. At 10.30 sighted steamer on port quarter, headed same as this vessel. She past to port.

SUNDAY, *October 30th, 1898.*

First part, cloudy, with fresh breeze from ENE. 3 a. m. light breeze same quarter. Average revolutions for watch 49 $\frac{3}{10}$. At 3 a. m. tug *Merritt* changed course to ENE. At 3.30 to NE. $\frac{3}{4}$ E., by standard compass. Bow watch at hawser 12 to 2 a. m., J. Darlington; 2 to 4, J. N. Fleshman. Stern hawser 12 to 2, E. R. Mason and C. S. Smith; 2 to 4, A. Tranah and H. E. Mason. At 4 a. m. Cape Maysi bore about NNE. No signals from *Teresa* or *Merritt*.

4 to 8 a. m. cloudy, gentle to moderate breeze from ENE. At 5 a. m. changed course to NE. $\frac{1}{2}$ N.; at 6 a. m. to NNE. $\frac{1}{2}$ E., and at 7.30 to N. $\frac{3}{4}$ E. Sighted Maysi light at 6.48 bearing N. $\frac{1}{2}$ W. At end of watch Maysi light bore NW. by W. $\frac{1}{2}$ W., distant 4 miles. High land in sight on port bow and beam after daylight. Patent log reading 72.4. 8 a. m. to m., cloudy weather, gentle breezes from NE., increasing to moderate breeze from NE. by E. At 8.12 Cape Maysi abeam, distant 3 miles. At 8.25 changed course to N. $\frac{1}{4}$ W. Pat. log 74.8. At 8.50 *Cincinnati* signaled international signal "BQR" (pleasant passage), answered international "RSJ" (thanks). She then went about with port helm and headed to southward. At 10.30 took departure from Cape Maysi, light-house bearing south, distant 13.3; course N. $\frac{1}{4}$ W. At 11.00 changed course to N. $\frac{1}{2}$ W. At 11.00 all hands to muster on forecastle and summary court martial sentence of W. J. Cochrane, Mch 2 cl., was read; sentence, to be confined in solitary confinement in single irons for twenty days on bread and water, with full ration every third day, and the loss of thirty days' pay. At noon gave *Merritt* lat. 20 42′ by int. code. At 1.30 p. m. asked for their latitude at noon. Answered 20 37′. *Teresa* asked if *Vulcan* bitts were started. Answered "No." Gave *Teresa* *Vulcan's* average speed nearly 6 knots. Distance at noon by pat. log 95.1. Weather clear and light breeze from eastward during watch, moderate beam sea. At 2.15 p. m. Cape Maysi bore S. $\frac{1}{4}$ W. by standard compass, distant about 35 miles. U. S. S. *Leonidas* in company, off *Teresa's* port quarter. At 2.30 white steamer on starboard beam, bound south. Asked *Teresa* if engines turning. Replied, "Turning 35 revolutions since 7 o'clock last night."

4 to 8 p. m. Cloudy at end of watch. Moderate breeze from E. by S. Steamer passed on starboard side, bound north. Schooner passed on starboard side, bound south. Pat. log at end of watch 142.6.

8 to 12. Cloudy, stiff breeze from E. by S., shifting to ENE., pat. log reading 164.4 at end of watch. Revolutions 44.5, steam 67.

MONDAY, *October 31st, 1898.*

At 12.10 made Castle Island light from the masthead, bearing N. $\frac{1}{4}$ E. $\frac{1}{2}$ point on starboard bow. At 12.40 light visible from bridge. At 12.30 course changed to N. by W. Signaled light sighted to *Merritt*. At 3.45 changed course to N. $\frac{3}{4}$ W. Clear and pleasant. Gentle breeze from ENE. French troop ship passed, bound north. Passed a small steamer at 5 a. m., bound south. Dropped Castle Island light at 6 a. m. bearing SSE. At the end of watch the southern point of Crooked Island port beam. Pat. log 213.6.

8 a. m. to m. Cloudy, with light breezes freshening to gentle breeze from ENE. At 9.45 Bird Island light-house bow bearing; pat. log 29.0.

Signaled latitude 22 59′ N. *Merritt* signaled 22 59′ N. Pat. log 237.9. Clear weather and warm, light breeze ENE.; long swell, same quarter. Dropped Bird Island light at 12.40 bearing S. by E. ¾ E., distant 12 miles. At 3 p. m. wind shifted to NNE., at 3.30 to N. by E. Cloudy to the NW. and squally.

4 to 8 p. m. Overcast, cloudy, and squally. Moderate breeze from north. Sighted Rum Key at 5.45 bearing WNW. Passed a steamer at 7 p. m. bound south. Sighted Watling Island at 7.45 bearing NNE. Pat. log 84.7.

8.12 p. m. Overcast, cloudy, squally. Moderate to stiff breezes from north. At 10.10 Watling Island light abeam, pat. log reading 297.7. Pat. log 306.6.

TUESDAY, *November 1st, 1898.*

At 12.50 dropped Watlings Island light bearing SE. by S. At 12.55 heavy squall from NE. Furled forward awning and made all secure about decks and below. At 2.45 *Teresa* signalled "Signal *Merritt* steer to windward." Did so. At 3.00 a. m. course changed to N. by E. ½ E. Pat. log 221.1. Strong breeze from N. by E. with squalls and heavy sea running. Eased off starboard side of towing bridle about a foot. Slowed revolutions from 45 to 40. At 2.30 a. m. signalled *Teresa* barometer 30.07.

4 to 8 a. m. Overcast, cloudy, and squally. Moderate to strong gale from NNE. to NE. by N. Barometer rising. All vessels pitching heavily.

8 to 12 m. Cloudy, squally weather. Moderate gale from ENE., shifting to NE. and then to NE. by N. Capt. Harris signalled from *Teresa* several times to know the height of barometer and course. Repeated message from *Teresa* to *Leonidas*, "Do not keep too far ahead," viz, Tel. 8434, Tel. 4373, Tel. 0039. In answer to question from Capt. Harris as to direction and distance of Watlings Island light, signalled "SSE. about 30 miles." Pat. log propeller lost. At 12 m. *Teresa* signalled to *Vulcan* to repeat to *Merritt*, "Can you run to Watlings Island safely?" Answer. "No." To *Leonidas* from *Teresa*, "Come within hail." *Merritt* to *Teresa*, "Give your orders." *Teresa* to *Merrit*, "Cast off and come within hail." *Vulcan* to *Leonidas* from *Teresa*, "Come to windward of wreck; going to abandon ship, and want your assistance." We added, "Use oil on water." *Teresa* to *Vulcan* about 1 p. m., "Cast off *Merritt's* hawser." Whistle signals were given and the hawser let go. While *Merritt* was hauling in hawser *Teresa* signalled to her, "Come alongside; let hawser go." At 1.30 *Teresa* to *Vulcan*, "Start your oil," just as first boat lowered from *Teresa*. This boat made three trips with rescued people to *Merritt*; then a second boat from *Teresa's* port side was lowered. This boat made two trips, and the first one two more (5 in all); total, 7 trips. The last boat load was safely transferred at 5 p. m.

At 4.12 p. m. *Teresa's* last signal was, "Do not cast off yet; we have two boat loads." At 2.40 p. m., after two boat loads rescued, *Leonidas* signalled "What is the matter with *Teresa*."

At 5.11, by order of the commanding officer, the lines holding the *Teresa's* hawser were cut and that vessel was cast adrift.

Vulcan's crew cheered the Stars and Stripes flying from the *Teresa's* jack yard. *Vulcan's* crew launched two life rafts fully equipped. Both

were lost. The boats manned by wrecking crews made seven trips in rescuing all hands. *Vulcan* hove to heading NE. by N. 5.30 to 8 p. m. same as before, course NE. by N. *Merritt* got underway and stood after us. Close aboard at 6 p. m. Lost *Merritt* at 7 p. m. At end of watch *Leonidas* on our port beam. 8 to 12 p. m. Cloudy, squally weather, gale increasing to heavy from NNE. Engines just turning over, so that we would not get too far away from *Merritt*. At 8 p. m. *Merritt* was not in sight. *Leonidas* on port quarter. At 9.30 *Leonidas* not in sight on account of thick weather.

Order convening court of inquiry, November 17, 1898.

To Captain BENJAMIN F. DAY, U. S. Navy,
Member Naval Examining Board,
Navy-Yard, Washington, D. C.

A court of inquiry, consisting of yourself as president, of Captain John Schouler, and Commander Benjamin F. Tilley, U. S. Navy, as additional members, and of Captain Littleton W. T. Waller, U. S. M. C., as judge-advocate, is hereby ordered to convene at the navy-yard, Norfolk, Va., at 10 o'clock a. m., on Tuesday, the 22d instant, or as soon thereafter as practicable, for the purpose of inquiring into the circumstances connected with the abandonment of the steamer *Infanta Maria Teresa*, late of the Spanish Navy, at sea, about 310 miles distant from Caimanera, Cuba, on or about the first day of November, 1898.

The attention of the court is called to the instructions concerning the particulars to be investigated in the case of the loss or grounding of a ship of the Navy, contained in the U. S. Navy regulations (articles 1744–1747), which the Department deems applicable to this case.

The following-described papers relating to the matter are attached to and made a part of this precept:

1. Telegram, dated November 5, 1898, from Lieutenant-Commander Ira Harris to the Secretary of the Navy.

2. Report, dated November 3, 1898, by Lieutenant George P. Blow, then commanding the U. S. S. *Vulcan*, relative to the abandonment of the *Infanta Maria Teresa*, with accompanying reports of Lieutenants William W. Gilmer and Laton F. Smith, Ensigns James C. Somers and Gerald L. Halsinger, Assistant Paymaster Robert H. Woods, and Passed Assistant Engineer John L. Gow, and tracing accompanying Lieutenant Blow's report.

3. Letter, dated November 5, 1898, from Lieutenant George P. Blow to the Secretary of the Navy.

4. Telegram, dated November 5, 1898, from Lieutenant-Commander Ira Harris to the Secretary of the Navy.

5. Telegram, dated November 5, 1898, from the Merritt and Chapman Derrick and Wrecking Company to the Secretary of the Navy.

6. Telegram, dated November 5, 1898, from Lieutenant-Commander Ira Harris to the Secretary of the Navy.

The court will diligently and thoroughly inquire into all the circumstances attending the abandonment of the vessel referred to, and upon

the conclusion of the investigation will report to the Department its proceedings, all the testimony taken, and the facts which it may deem established by the evidence adduced, together with its opinion as to what further proceedings, if any, should be had in the matter.

The court will also report whether or not the abandonment of said vessel was in any respect due to fault or negligence on the part of any officer of the Navy, including the officers of the United States steamers *Vulcan* and *Leonidas*, and if so, the names of such officers, and in what respect and to what extent any or either of them were so at fault or negligent.

If the court shall be of the opinion that further proceedings should be had in the matter it will include in its report a succinct statement as to the person or persons against whom, and the specific matter upon which, such proceedings should be had.

The Department has to-day informed Commander William I. Moore, Lieutenant-Commander Ira Harris, and Lieutenant George P. Blow, U. S. Navy, that they have a right to be present during the investigation to cross-examine witnesses and to offer evidence before the court, should they desire to do so; and if the court shall find, during the progress of the inquiry, that other persons in the service are concerned in the matters under investigation it will inform them that they may also be present for said purpose.

This employment on shore duty is required by the public interests.

Given under my hand at the Navy Department, Washington, D. C., this seventeenth day of November, eighteen hundred and ninety-eight.

JOHN D. LONG,
Secretary of the Navy.

First telegram referred to in above order.

THE WESTERN UNION TELEGRAPH COMPANY,
Charleston, S. C., Nov. 5, 1898.

To SECY. NAVY, *Navy Dept., W., D. C.*

STEAMER I. J. MERRITT,
50 miles off Charleston, S. C., Nov. 4th, 1898.

SIR: I have the honor to make the following report of the loss of the *Infanta Maria Teresa*. On Nov. 1st, at 1 a. m., I found that it was blowing hard and went on the lower bridge. We had left Watlings Island light abeam at 10 o'clock, and up till midnight the weather was pleasant and all went well with the ship, although we had some trouble in keeping the pump in the forward fire room from being choked with coal. The wind continued to increase in force until perhaps 3 a. m., when it reached its height, although there were times all day when it blew as hard as ever. The direction was about NE. The sea continued to rise until perhaps six p. m. There was a heavy sea all the following day. The pumps were reported every hour. Soon after I came on deck I relieved the second mate, Mr. Johnson, so that he could go below to fight the water. About 3.30 the first mate, Capt. LeCato, came up and he also went below to work. Capt. Chittenden, who was on deck almost as soon as I, gave his attention to the pumps and

especially to priming the centrifugal pump in the forward fire room. There were many new leaks. When a heavy sea struck the sides the plates leaked at butts and seams, showing that after the fire they had resumed their former appearance, but were not tight. There was at the mainmast an inch of thwart-ship vibration and only half an inch longitudinal vibration. While making this examination, about 4.30 a. m., Capt. Chittenden was thrown down and fell on the chain, hurting his side and back enough to temporarily disable him. He continued to give us valuable advice. At 3 a. m. we made signal to the *Vulcan* and *Merritt* to go to windward, which they did as well as they could. Up to one o'clock a. m. we were running the starboard main engine and had steam on the two central boilers and three of the short forward boilers, but the trouble in the forward fire room caused the steam to run low, and lighted fire under the starboard after boiler and stopped the engine so as to run the steam up for the pumps. The pump for keeping the water from the forward compartment was driven by a belt, and when the sea broke over the bows the belt became wet and slipped. As soon as the water was up to the floor plates in the forward fire room the rolling of the ship swashed it into the coal bunkers and carried the coal out, choking the pump and carrying the floor plates about, which made it difficult and dangerous to work there. About 8 o'clock I called for volunteers to hoist coal and water in the ash hoist. Everybody responded, and the work was continued as long as it seemed of any use. About 3.30 a. m. it was reported that water was coming into one of the starboard forward coal bunkers and running into the fire room. Where this water came from we do not know. About two o'clock the 11-inch gun in the after turret ran out and in twice. When it recoiled the second time something gave way and it settled to the extreme elevation and remained stationary. We asked the *Vulcan* to signal the *Leonidas* to stay close to us, and the latter hoisted the flag at the signal yard arm, which was a signal agreed upon to call the *Leonidas* to come within hail. She was steaming ahead of us and making rather bad weather. It seemed as if she feared to turn in the heavy sea, but eventually she did cross ahead of the *Merritt* and twice passed under the *Teresa's* stern, although at some distance. I think she picked up the life rafts which the *Vulcan* threw over. About 11.30 we signalled the *Vulcan* to ask the *Merritt* if we could be turned safely to run for the lee of Watlings Island. To this Capt. Wolcott replied, "No," and as Capt. Chittenden thought we would sink if we tried to turn, this idea was given up. Both the *Vulcan* and *Merritt* could with difficulty keep us head to wind, and the sea was running so high that if the *Vulcan's* bitts started or the towline parted, the ship would fall into the trough of the sea. At one p. m. Capt. Chittenden asked me to signal the *Vulcan* to cast off the *Merritt's* towline and have the *Merritt* come alongside. I then assumed the command, told the men what was to be done, and assigned them stations. I told the chief engineer to start the engine to aid the *Vulcan* in keeping our head up. He did so, but it could run but a short time with steam we had. We signalled the *Vulcan*, "We are about to abandon ship; try to keep us head to wind." I ordered Captain LeCato to take charge of the lee surfboat, and when it was lowered to the rail ordered Captain Chittenden into it against his repeated protest. He was

placed in the boat with his son. This boat was unable to reach the line we had astern, but the *Merritt* picked it up, and after taking Captain Chittenden aboard towed the boat to our lee quarter and repeated this manœuvre each trip, forming a lee for the boats to come to her, and then towing them back. She was splendidly handled. From two until 5 the work of transferring the crew continued. Captain LeCato made two more trips, when, his arm being disabled, his place was taken by Mr. Johnson, who also took two boat loads. The life raft was gotten over and capsized, but was righted. It was put in charge of James Bashford, O. S., of the Illinois Naval Militia. He and his crew took six Cubans to the *Merritt*. The smaller surfboat stowed inboard on the lee side was then gotten out and I put it in charge of Chas. A. Dunne, quartermaster 1st C. E. I gave him nearly all the good seamen left for a crew. It was launched very handsomely and made two trips. In all these trips we poured oil from the sponsons on both sides and the *Vulcan* also used oil to make it smooth where the embarking was done. I doubt if we could have worked without it. The ship labored more and more heavily. Before I left the bridge she rolled her sponsons under (which I should estimate to be 30 degrees) and her pitching was enough to show her rudder propellers and perhaps 12 feet of her keel. She was about four feet by the head. She fell into the sea very heavily and shuddered as she rose. There was no water aft. The *Vulcan* did her best to keep our head up, steering to starboard and going full speed while the sea beat the *Teresa's* head to port. Throughout the day the *Vulcan* did everything possible. We were constantly signalling. With the exception of three men, who got drunk and gave much trouble, all the crew behaved well. Every man did his duty, and my orders were instantly obeyed by wreckers and men of the Navy. When the fires were low I called for volunteers, and the donkey boilers were at once fired up. Twice I asked C. F. Smith and Jas. F. Brien, chief machinists, to oil the steering engine, and they did so, and the engine ran till we left. When I took Dunne from the helm to lower the smaller surfboat, his place was taken by Wm. C. Morhoff, machinist, 2d cl., who steered the wreck until we left the bridge together, when he lashed the wheel amidships. Willard Crossett, bugler, was signalman, and was as cool as possible. He made no mistake, and was very useful to me as a messenger. About 4:30 he made signal, "Hang on to the wreck until you are sure she is sinking," to which the *Vulcan* replied, "We will hold on until she sinks or parts the towline." The last signal he made was, "These two boats will take all." After that I had to go aft to force the drunken men overboard, and about 5 we were all off. The boats were hauled under the stem as near as was safe, where the oil and lee of the ship made it smooth, and were held by one line, while another line, with a ladder attached, floated astern. On this line two double bights were stopped of the right size to go over a man's shoulders. The end was slacked from the ship, and when two men jumped they were hauled into the boat. A very fine fellow named Olesen attended to this. When all had gone but he and I, he cut the line and we jumped together. It was perhaps 5:30 when we reached the *Merritt*. While she was getting in the surfboats the *Vulcan* slipped the hawser of the *Infanta Maria Teresa*. I expect that the wreck dragging off to port brought all the

strain on the port bridle and started the bitts. When the boats were in, the *Merritt*, at my request, started to speak the *Vulcan*, but was unable to reach her, and she apparently did not hear our whistles. The *Merritt* then returned to find the wreck, but could not do so. The search continued until 1 p. m. the following day, when she headed for Charleston.

Very respectfully,

IRA HARRIS,
Lieut. Comd'r, U. S. N.

Findings Naval Court of Inquiry, December 2, 1898.

NINTH DAY.

NAVY-YARD, *Norfolk, Va., Friday, Dec. 2, 1898—10 a. m.*

The court met pursuant to the adjournment of yesterday.

Present: All the members and the judge-advocate, with the stenographer.

The record of yesterday was read and approved.

All the evidence being now before the court, it was cleared for deliberation, the stenographer withdrawing, and after maturely deliberating on the evidence adduced, finds as follows:

It appears from the evidence that the *Infanta Maria Teresa* left Guantanamo Bay, Cuba, under the charge of the Merritt and Chapman Derrick and Wrecking Company, in tow of the U. S. S. *Vulcan* and the wrecking steamer *I. J. Merritt*, and convoyed by the U. S. S. *Leonidas*, on the evening of October 29, 1898;

That the ship was in such condition as to make the passage to Norfolk, Va., in reasonably fair weather, but not fit to encounter heavy weather.

It also appears that Lieutenant-Commander Ira Harris, U. S. Navy, was in charge of the Government employees, enlisted men, and Cubans on board the *Infanta Maria Teresa* at the request of the representative of the Merritt and Chapman Derrick and Wrecking Company, to assist the said company in taking the ship to Norfolk, Va.;

That the voyage was favorable until the morning of November 1;

That the towing against a heavy head sea opened leaks in the vessel, which had not been discovered in smooth water, causing an inflow of water which could not be cleared by the pumps.

It further appears that the failure of the pumps to clear the ship was due, in a measure, to the neglect of the people in charge to properly clean out the bilges before starting; the failure of the two principal wrecking pumps, caused in the one case by the wetting and slipping of the bands and in the other by the breaking of the priming pump, added to the difficulty of the situation;

That the water came so high that the furnaces could not be fired; the steam supply could not be kept up, and it was decided by Captain Chittenden, in charge of the *Infanta Maria Teresa*, the representative of the wrecking company, to abandon her while it was yet daylight.

After this decision had been reached and announced, Lieutenant-Commander Harris, U. S. N., assumed command, with the approval of

Captain Chittenden, who had been previously disabled by a fall, and the two mates being required for service in the surfboats;

That the transfer of the ship's company to the *Merritt* appears to have been skilfully accomplished and without loss of life. The representative of the wrecking company, Captain Chittenden, resumed direction of affairs as soon as the transfer of the crew had been completed.

It also appears that the steamer *Merritt* having been taken from towing ahead in order to save the crew of the *Infanta Maria Teresa*, the *Vulcan* could not keep the *Teresa's* head up to sea; the wreck appearing to be in a sinking condition, with night coming on; the crew having been saved, the *Vulcan* cast off the tow line; no lights having been exhibited on the wreck, she was soon lost in the darkness;

That the unanimous testimony that the ship was not prematurely abandoned and the signals made to the *Vulcan* during the transfer of the people leads the court to believe that the *Teresa* was expected by those on board of her to founder soon;

That the *Merritt* lost sight of the wreck and failed to find her during the night;

That at daylight on the 2d of November the three vessels cruised over the supposed scene of the abandonment, but failed to sight the wreck, the gale continuing with heavy sea and thick weather making it difficult to sight objects;

That the *Merritt*, having lost sight of the other vessels, searched for the *Teresa* until 1 p. m., November 2, and then proceeded to Charleston, S. C.;

That the other vessels, believing the wreck had sunk and having lost sight of the *Merritt*, made search for that vessel; failing to find her, proceeded on the voyage to Norfolk, the *Vulcan* leaving at 9.45 a. m. and the *Leonidas* at 4 p. m., Nov. 2;

That the wreck drifted from the time of abandonment at 5.11 p. m., Nov. 1st, about 55 miles WSW. ½W., stranding on Cat Island near Bird Point, where she now lies, hopelessly wrecked and abandoned.

It would seem that the casting off of the towline and consequent freedom of the ship to drift before the wind and sea caused a great improvement in her condition.

The court is of the opinion that the assumption of command by Lieutenant-Commander Ira Harris, after the decision to abandon the ship had been communicated, was necessary and proper under the circumstances, and his conduct on the occasion under trying conditions is to be commended.

The court is also of the opinion that Lieutenant George P. Blow, in charge of the *Vulcan*, acted properly in casting off the wreck after the transfer of her crew had been accomplished.

Holding on to the *Teresa* through the night in her supposed sinking condition would have been imprudent at least. Lieutenant Blow rendered all the assistance possible during the abandonment of the *Teresa*.

The court is of the further opinion that during the abandonment of the *Maria Teresa* the *Leonidas* rendered such assistance as was called for, the evidence showing that during the violent gale prevailing the *Leonidas* was partly unmanageable.

Finally the court finds that the abandonment of the steamer *Infanta*

Maria Teresa was in nowise due to fault or negligence on the part of any officer of the Navy, and is of the opinion that no further proceedings should be had in the matter.

B. F. DAY,
Captain, U. S. Navy, President.

LITTLETON W. T. WALLER,
Captain, U. S. M. C., Judge-Advocate.

EXHIBIT "G."

CONTRACT.—*Merritt and Chapman Derrick and Wrecking Company with the United States, Feby 6, 1898.*

Contract for raising Spanish war vessels now ashore on the Southern coast of Cuba near Santiago.

Contract of two parts, made and concluded this sixth day of July, eighteen hundred and ninety-eight, by and between the Merritt and Chapman Derrick and Wrecking Company, a corporation created under the laws of the State of West Virginia, and doing business in the city of New York, State of New York, represented by I. J. Merritt, president of said company, party of the first part, and the United States, represented by the Secretary of the Navy, party of the second part.

Whereas the party of the second part is desirous of raising and saving as many as possible of the Spanish vessels lately composing the fleet of Admiral Cervera, injured by the United States naval vessels of Rear-Admiral Sampson's squadron in the recent battle off Santiago de Cuba and run ashore near that place; and

Whereas the party of the second part has accepted the offer of the party of the first part for wrecking said vessels:

Now, therefore, this contract witnesseth, that in consideration of the premises, and for and in consideration of the payments to be made as hereinafter provided, the party of the first part, for itself and its successors and assigns and its legal representatives, does hereby covenant and agree to and with the party of the second part as follows—that is to say:

That the party of the first part will at once proceed to Santiago de Cuba with its wrecking steamer *I. J. Merritt*, with crew and provisions; four steam pumps with boilers, equipment, fittings, and connections; three cables and anchors; three blocks and falls; two surfboats and one steam hoister, accompanied by one wreck-master, one assistant wreck-master, two foremen, four pump engineers, three divers with tenders and apparatus; sixteen wreckers and two firemen, and, upon arrival at the scene of the wreck of the *Cristobal Colon*, at once begin the work of raising that vessel, with so much of her armament, stores, guns, material, equipment, fittings, appurtenances, and other articles as it may be possible to recover, and will prosecute the work with dispatch, carefully and in a businesslike manner, and by all means possible; such of said vessel's armament, stores, guns, material, equipment, fittings, appurtenances, and other articles as may be recovered, together with the vessel herself, if the party of the first part shall be successful in raising her, to be taken by

the party of the first part, if so required by the party of the second part, without unnecessary delay, to the navy-yard, Norfolk, Va., and there delivered to the commandant of that navy-yard, subject to such change in place of delivery of vessel or recovered property as may be decided upon by the party of the second part.

Inasmuch as it is believed that the *Cristobal Colon* is the least damaged of all the Spanish vessels above referred to, the party of the first part will endeavor first to float her, and in case of success in that undertaking, or if it should, in the judgment of the senior United States naval officer present, be impossible to save that vessel, or if, in his judgment, during the work on the *Cristobal Colon* it should be practicable to devote any time, attention, or labor to the saving of any of the other of said vessels, then the party of the first part shall do all in its power towards the accomplishment of that end, it being the purpose of the employment by the party of the second part of the party of the first part in this work that the party of the first part shall endeavor by all means known to it, as wreckers of skill and experience, to save all the said vessels or as many of them, if any, as possible.

Should it appear to the party of the first part after arrival upon the scene of operations, or from information received previously, desirable or advantageous to have other wrecking vessels, appliances, appurtenances, or outfit of employes in addition to those herein specified, then their use and employment shall be the subject of agreement between the parties hereto, it being understood, however, that in such case the rates of compensation to be paid by the party of the first part shall not exceed the rates to be paid for service of a like character in accordance with this agreement, and that if it should be necessary for the party of the first part, in its judgment, to charter, hire, or employ vessels, plant, or apparatus of any kind, or belonging to other persons or companies, only the net cost thereof to the party of the first part shall be reimbursed to it by the party of the second part.

The party of the first part, in order to the proper performance of the work hereby undertaken by it, in accordance with the true intent and meaning of this contract, shall furnish all the material that the extraordinary requirements of the case may demand, such material, exclusive of the plant and equipment requisite and properly appertaining to the vessels and appliances hereinbefore specified, to be charged to the party of the first part at the actual cost thereof at the place of operation.

An officer of the Navy, to be designated by the commander in chief, and at all times subject to his orders, under the direction of the Secretary, shall be present at the scene of the work as the Department's representative, to supervise and inspect the operations under this contract, and the party of the first part shall subsist such officer on board its vessel during the performance of such work and until the return to the navy-yard at Norfolk, if so required.

It is mutually and expressly covenanted and agreed that this contract shall not, nor shall any interest herein, be transferred by the party of the first part to any other person or persons, and that it and the work, or any part thereof, under it may be terminated at any time at the option of the party of the second part.

The party of the second part, in consideration of the premises, hereby

covenants and agrees to and with the party of the first part, as follows—that is to say:

The price to be paid per diem for the vessel, appliances, plant, and employes of the party of the first part, as hereinbefore enumerated, while at work at the scene of the wreck shall be eight hundred dollars ($800.00), which sum shall cover all charges, including subsistence of employes, except as herein otherwise expressly agreed, and the price per diem to be paid for such vessel, appliances, plant, and employees during the time of the passage to Santiago de Cuba and return shall be twenty-five per cent less than the prices above named for the same while at work at the scene of operation; except that if upon the return of the party of the first part's vessel, it shall be towing one or more of the Spanish vessels, then the full price per diem ($800.00) shall be paid as if at work at the scene of the wreck; it being understood that the time consumed in going to Santiago de Cuba and returning shall not exceed the average time usually taken by a vessel of the *I. J. Merritt's* class to make such passage, which time shall commence on the day of leaving the home station and continue until the time of returning to the same.

In case any of said vessels should be raised and it should be found necessary to dock and temporarily repair them at Santiago de Cuba or elsewhere, the actual cost thereof, paid by the party of the first part, shall be reimbursed to it by the party of the second part. Should the party of the first part succeed in raising any one or more of said vessels and delivering the same to the party of the second part in accordance with the terms and conditions of this contract, the said party of the first part shall receive, as further compensation over and above the per diem compensation and expenses to be paid as hereinbefore stipulated on account of its services in this behalf, such additional sum as may be awarded by a board appointed for that purpose, to consist of one person selected by each of the parties hereto, and, in case of their disagreement, of a third person chosen by the two first selected, it being, however, expressly understood, covenanted, and agreed by and between the parties hereto that, inasmuch as the United States naval repair ship *Vulcan* has been dispatched to the place where said Spanish vessels lie, and, as she is well equipped and supplied with every appliance necessary to render valuable service in the work of wrecking and repairing vessels and will be able to give material aid and assistance to the party of the first part in carrying on the operations herein contracted for, the *Vulcan* and her crew shall assist in said work to such extent and in such manner as may be considered proper and expedient by the Department's representative on the scene and as may be authorized by him, and that in case any of said wrecked vessels shall be raised and delivered by the party of the first part to the party of the second part as hereinbefore stipulated, such services as may have been rendered by the *Vulcan* and her crew in connection therewith shall be considered by the board above referred to in determining the additional compensation to be paid to the party of the first part for raising and delivering as aforesaid such vessel or vessels. No deduction from such additional compensation shall, however, be made by way of salvage, prize money, extra pay, or allowances of any kind to the officers or crew of the *Vulcan* on account of her participation in the work.

The party of the second part will protect the party of the first part

against interference or interruption in the progress of the work, keeping in the vicinity thereof a naval vessel or vessels, and will reimburse to it any port charges paid at any place in consequence of the work hereby undertaken.

Payments under this contract shall be made monthly as the work progresses, upon vouchers duly certified by the Department's representative, in such manner as shall be prescribed by the Secretary of the Navy.

The warrants for payments under this contract shall be made payable to the party of the first part or its order.

The party of the first part shall be entitled, within ten days after the filing and acceptance of its claim, to receive final payment in accordance with the terms of this contract on the execution of a final release to the United States, in such form as shall be approved by the Secretary of the Navy, of all claims, of any kind or description, under or by virtue of this contract.

In witness whereof, the respective parties hereto have hereunto set their hands and seals the day and year first above written.

THE MERRITT AND CHAPMAN DERRICK AND WRECKING COMPANY,
By I. J. MERRITT, *President.*

[Seal of Merritt-Chapman Wrecking Co.]

Attest by
WM. W. CHAPMAN, *Secty.*

[Seal of Navy Department.]

THE UNITED STATES,
By JOHN D. LONG,
As Secretary of the Navy.

Despatch—Allen, Acting Secretary, to Commodore J. C. Watson, U. S. N., August 27, 1898.

AUG. 27, 1898.

WATSON, *Caimanera, Cuba:*

You are placed in charge wrecking operations with full authority to take such action as you may deem for best interests of Government, including concentration of all work on *Maria Teresa* or otherwise, and discharge of men; proceed to scene of operations in person with any vessel you wish and inspect. Department inclined to believe wrecking companies are unnecessarily dilatory and require sharp supervision. Acknowledge.

ALLEN.

Report—Commander Ira Harris, U. S. N., September 28, 1898.

U. S. S. VULCAN,
Guantanamo Bay, Cuba, September 28, 1898.

SIR: I have been shown by the senior officer present, Captain C. F. Goodrich, U. S. Navy, the cable message directing that the *Vulcan* proceed to Boston immediately and the one directing the continuance of the work on the *Infanta Maria Teresa* and other wrecks. The earlier telegram was received to-day and the later one some three days ago. I am also to-day in receipt of the following communication:

"U. S. FLAGSHIP SAN FRANCISCO,
"*Fort Monroe, Va., September 17, 1898.*

"SIR: In accordance with orders from the Navy Department, the vessel under your command is hereby detached from this date from the North Atlantic Station.

"Very respectfully,
(Signed) "J. A. HOWELL,
"*Rear-Admiral, U. S. Navy,*
"*Commander in Chief North Atlantic Station.*

"The COMMANDING OFFICER."

The senior officer present directs me to write the Department. I have the honor to report, therefore, that this ship's force is almost entirely engaged in assisting the wrecking company in repairing the *Infanta Maria Teresa*, and in preparation for her delivery in Norfolk.

The only other important work is on the *Sandoval*, where we have nine mechanics, assisted by five Cuban carpenters and eight Cuban laborers.

The work on the *Infanta Maria Teresa* is completely in accord with the wishes of the wrecking company, as expressed through the wreckmaster in charge, Captain Chittenden. On the arrival of the wreck here she was moored in the splendid position chosen by Captain Goodrich; the *Vulcan* was anchored close to her and the commanding officer established a Cuban camp very near.

Besides the work being done in the *Vulcan's* shops, there are to-day 30 of her mechanics, 3 Cuban machinists, 11 Cuban carpenters, and 32 Cuban laborers employed on her, besides 23 additional Cuban laborers engaged by me by request of the wrecking company. All the Cubans live in Camp Goodrich and all work together.

I am in the *Teresa* from 6.45 a. m. till night, unless temporarily required elsewhere, giving general supervision to all the work and especial attention to the carpenter work, for which no Americans could be spared. Passed Assistant Engineer Scott gives his entire time to the work, acting as superintendent of our mechanics.

Separate foremen and working gangs are putting the pumps, dynamo engine, steering engine, and main engines in order, and I respectfully suggest that Mr. Scott and the foreman of all these gangs of men should be allowed to make the voyage to Norfolk in the *Teresa*, as their knowledge of the machinery would render their services very valuable.

Two gangs of the *Vulcan's* boiler makers and three Cuban mechanics are engaged in stopping openings in the sides and decks.

In order to save our men and enable them to work faster, I have given them Cuban helpers.

The wrecking company's men are patching the leak under the forward turret. The condition of the wreck on its arrival was far from satisfactory from a sanitary point of view, and a large force of the Cuban laborers was immediately employed in cleaning out the filth and putrid rice in the bilges and other places. Many of the wrecking company's men are sick, but I believe that cleaning and whitewashing the ship and substituting distilled for Santiago water will soon make her a healthy ship.

The senior officer present, Captain Goodrich, visits the wreck daily and is giving the work as much attention as his other duties allow.

I address this letter to the Department, as the detachment from the North Atlantic Station makes it appear proper to do so, and I think the details of the work may be of interest.

Very respectfully,

IRA HARRIS,
Lieut. Comdr., U. S. Navy, Commanding.

The SECRETARY OF THE NAVY,
Washington, D. C.

Report of J. W. Chittenden, October 4, 1898.

GUANTANAMO BAY, *October 4, 1898.*

To the Government of the United States:

In accordance with the contract between the Government of the United States of America and the Merritt and Chapman Derrick and Wrecking Company, of New York, I respectfully request that of the *Vulcan's* men now engaged in cleaning and fitting up the engines and machinery of the *Infanta Maria Teresa*, the engineer officer in charge, and at least two machinists from each of the five gangs now at work on the pumps, steering gear, drainings, and main engines be ordered to make the voyage in the *Infanta Maria Teresa*, and also that two sets of boiler makers, with portable forges, tools, and plates to make any emergency repairs, be also ordered to go north in her.

As the *Infanta Maria Teresa* will go at a speed of about six knots per hour under her own steam, and with the steamer *I. J. Merritt* ahead towing should make a speed of about eight knots per hour, I would request that the Government appoint a suitable boat to convoy her to Norfolk, Va. This without any waiver of the contract terms.

I respectfully request that you will allow volunteers from the other ships of the squadron to assist the employees of the wrecking company in delivering the *Infanta Maria Teresa* to the Government at Norfolk, Va., as it is necessary to leave a large force of the wrecking crew to work on the other wrecks. I also request that the commanding officer of the *Vulcan* pick out some Cubans to assist in passing coal and firing on the wreck. The *Vulcan* would be a suitable boat to convoy the *Infanta Maria Teresa*, but to return to assist in saving the other wrecks in Cuban waters.

Very respectfully,

J. W. CHITTENDEN.

Report of Commander Ira Harris, U. S. N., October 18, 1898.

U. S. S. VULCAN,
Guantanamo Bay, Cuba, October 18, 1898.

SIR: I have the honor to report on the condition of the *Infanta Maria Teresa* and progress since my last report, Oct. 12th.

1st. As regards securing the bow where the holes are found I wish to be more explicit, as there all the danger lies and the only questions of judgment arise.

As before stated, these injuries lie in a space about 7 feet square on

the port side, and all, except loose rivets, in the streak of plating next the garboard streak (B streak).

In sketches herewith enclosed I have marked the injury, locating it as nearly as Captain Chittenden can tell, from the spindle of the turret. The sketch is made on a scale of $\frac{1}{8}''$–$1'$, but you will bear in mind that our data is made from what can be seen from the sail room, which is entered from forward of bulkhead 97; the paint room, which is reached from abaft that bulkhead and from the port side pocket, which is reached through the brig and engineer's storeroom, forward of No. 98. It is impossible to be at all accurate, but I trust these sketches will give you an idea.

The greatest injury lies where it is marked A. Here the plate is broken and turned up 16 inches. Until this morning it was supposed that the sister kelson was by the side of this part of the hole, and we feared that it would be necessary to cement and concrete in the four places made by the bulkhead 97 crossing the sister kelson. But we have discovered that the sister kelsons do not extend so far forward, so that at most we have but two places to secure, and a man could crawl between the frames from the torn-up bottom of the side pocket to the hole we have cut in the sail-room floor.

Whether the injury extends abaft bulkhead 97 or not is as yet uncertain. I fear it does, but if so, the opening can not be very large. There was about 5 feet of sand in the paint room when I was there yesterday, but it was entirely dry, draining into the sail room, where it is pumped.

There is a rod at the point B for working a sluice gate, but the heat has injured all gates. I presume that is the forward end of the port main drain.

If the iajury is all forward of 97, then we need only cement and concrete a space containing 81 cubic feet, being between the main and port bilge kelsons and the bulkhead and next forward frames.

If the cracks go abaft the bulkhead, then it will be necessary to secure a similar space abaft it.

At the side of the engineer's storeroom, which is abaft the brig and has its forward end at 98, is a hatch leading down to the side pocket. There was a wooden floor to this pocket with a hatch, but it is all carried away, I suppose, by the water, and access is given to the sail room thereby.

Some of the floor of the wine room has been raised, and through a hole made in the bulkhead I see a small stream of water running aft, but a small wrecking pump, running half time, keeps all clear forward, and when the cementing is done the ship will be quite dry forward, in port.

It was suggested by Captain Chittenden that an additional security would be had by building a bulkhead below the inner bottom (shown in sketch) and from side to side along a frame abaft the turret spindle at CD. If that was done and the inner bottom of floor made tight forward of it, she would float safely, no matter what happened to the patch. If we can cement and concrete all above the holes, I believe this bulkhead, which would take considerable time to make, is entirely unnecessary. I believe Captain Chittenden so considers it. As to the danger of losing the patch, that patch is 7 by 9 feet and is from 11 to 12 inches thick. It is built of 5 layers of wood, with 4 thicknesses of canvas, and next

the ship 4 layers of hair felt. It is held by four lines of wire rope 3½ inches in circumference. Each end of each line is secured to the upper deck with turnbuckles. Four lead to heavy brass castings made for the purpose by the *Vulcan*. I see no great danger of losing the patch unless we have to run before a heavy sea and get a slack towline.

On Sunday Captain Chittenden and the captain of the *Merritt* came on board of the *Vulcan*, and we examined the bitts and decided how to tow. I don't think we will lose the patch, but if so, if the cement is all right, the ship will not founder.

As to time. The sand is out of the sail room, and to-day, when I was there, nothing but a little mud was in the double bottom. We will cement that at once. It takes 4 days for cement to set properly. If we don't have to work abaft 97 we will have the hole secure this week, I believe.

2nd. The starboard main engine was run yesterday and, considering everything, ran well. There were many steam leaks and the reversing engine is not running smoothly as yet, but the engine will be all right in a couple of days. The port engine will be ready, perhaps, Friday. The forward main boilers have been filled with fresh water.

All the boilers are now in good order.

3rd. The deck is laid, except that a few openings have to be closed.

The roof is all framed and nearly covered. The bulkheads have yet to be put in. The deck is being covered with canvas. All the carpenter work will be done this week.

4th. The drainage and pumping systems are not yet in a satisfactory state, but I believe they will be by the end of the week. It has been necessary to keep the ship by the stern and many connections are below water. The main wrecking pump of the ship does not yet draw water. It is by far the most powerful pump and I had it put in perfect order at once. We are to-day pumping down some feet, and I expect there will be no trouble in getting it (and all pumps) to work.

This drainage matter delays coaling, as the pipes pass through the coal bunkers. We need about 300 tons of good coal in addition to what remains in the ship.

5th. Most of the holes in the sides are closed. I am having all those made by the fire of the fleet painted white with numbers indicating the size of the shells causing them.

Of the unimportant work, the cable connecting the turrets is still to be done. I want to get the deck on which it will rest completed first. The tie plates, stringers, and side plating having now about as much tensile strength as before the action. I do not consider this at all important, but it can be done before the bottom is all safe.

As before reported, the work being done by *Vulcan* and wrecking men is in entire harmony, and every day's work together increases my respect for the character and ability of Captain Chittenden and his assistants.

Arrangements for crew are nearly complete. Some who go north in her are already living in her.

Very respectfully,

IRA HARRIS,
Lieut. Comdr., U. S. N., Commanding.

SENIOR OFFICER PRESENT.

Orders of Captain C. M. Chester, U. S. N., to Commanding Officer U. S. S. Leonidas, October 27, 1898.

U. S. STEAMER CINCINNATI, 2ND RATE,
Guantanamo Bay, Cuba, Oct. 27, 1898.

SIR: You will proceed with the United States steamer *Leonidas*, under your command, to Norfolk, Virginia, and report to the commandant of the naval station, delivering the guns and other articles from the wrecks of the Spanish vessels now on board the *Leonidas*. Please leave this port on or about Friday, October 29, 1898, to join in the convoy of the steamer *Infanta Maria Teresa*, and remain with that vessel until beyond the Bahama Banks and as much further as may seem desirable.

Respectfully,
C. M. CHESTER,
Captain, U. S. Navy, Comdg., Senior Officer Present.

To the COMMANDING OFFICER OF THE
UNITED STATES STEAMER LEONIDAS.

Orders of Captain C. W. Chester, U. S. N., to Commander Ira Harris, U. S. N., October 29, 1898.

U. S. S. CINCINNATI, 2ND RATE,
Guantanamo Bay, Cuba, October 29, 1898.

SIR: 1. When the steamer *Infanta Maria Teresa* and the U. S. S. *Vulcan* are in all respects ready for sea you will please proceed with the *Vulcan*, under your command, to convoy the former vessel, which is in charge of the Merritt and Chapman Derrick and Wrecking Company, to Norfolk, Virginia, or to such other port as the wrecking company may wish to take her or to which you may be directed by competent authority.

2. I enclose herewith a copy of a telegram from the Navy Department to Commodore John C. Watson, U. S. N., giving him authority to direct the work of wrecking Spanish vessels, which authority has been delegated to me as senior officer present, and which is hereby transferred to you as far as it is applicable to the *Infanta Maria Teresa*. This and the contract entered into between the wrecking company and the Secretary of the Navy, dated July 6, 1898, will be your guide in giving assistance in the transfer of that ship to a northern port.

3. I also send you a request from the wrecking company to me, asking for the detail of yourself to take charge of the Government employees on board the *Teresa* during the passage north, which you are authorized to assume at discretion; but, in any case, a suitable officer of your command will be on board at all times until the ship is properly delivered at Norfolk.

4. Keep the Navy Department advised at all times, as far as practicable, of the progress of the important Government interests under your charge, and seek its permission to return to this port as soon as convenient to continue the work of raising the Spanish wrecks at or near Santiago de Cuba.

Respectfully,
C. M. CHESTER,
Captain, U. S. Navy, Commanding, Senior Officer Present.

Lieutenant-Commander IRA HARRIS,
U. S. Navy, Commanding U. S. S. Vulcan.

Report of Capt. C. M. Chester, U. S. N., October 31, 1898.

No. 201. U. S. S. CINCINNATI, 2ND RATE,
Port Antonio, Jamaica, October 31, 1898.

SIR: 1. The following is a copy of the report of Lieutenant-Commander Ira Harris, U. S. N., who is in charge of the Government interests on board the steamer *Infanta Maria Teresa:*

"INFANTA MARIA TERESA,
"*Guantanamo Bay, Cuba, October 29, 1898.*

"SIR: I have the honor to make the following report of the final arrangements for the voyage north:

"The condition of this ship is now satisfactory. The injury to the bow extended two feet farther aft than we thought, and made it necessary to concrete a whole frame space abaft bulkhead 97. All the holes and cracks were secured by iron patches, slipped outside through the openings and secured by bolts to strong iron toggles. These iron patches were made of different shapes to fit, and in no case came within two inches of the wooden patch outside. They were covered with hair felt and canvas and formed a fair water stop of themselves.

"The concreting and cementing was a very interesting and well-arranged work. Perhaps fifty barrels of crushed coral with some lump coal had been prepared and many boxes, blocks of wood, and other things for making dams. At the first pour 26 barrels of cement were used. The work had to be done simultaneously through openings in the side pocket, paint room, and sail room. Two different mixing boxes with double force of men made it possible to have cement and concrete always ready of the kinds wanted, and three chains of Cubans passed it in buckets.

"All the openings are secured as well as possible and the cement work varies from 2 to 4 feet 8 inches in thickness.

"Bleed pipes are fitted leading to the pumps. The water leads to the wine room, which has a floor 6 by 15 feet. The leak has varied since from 8 inches in 6 hours to 3 inches in 1 hour in this room. The deck and other woodwork is done. The drainage is in fairly good condition.

"We have retained on board 13 of the wrecking pumps, four of them connected, and most of the ship's pumps are in working order. The ship's wrecking pump, 12-inch discharge, has been put in good order, but does not work. I think it is simply because there is not water enough for it. The suction is 23 feet below the pump and it will not lift that high. In case water should come in aft, I believe it would be very useful.

"Much dirt has been cleaned out and many parts of the ship whitewashed, its sanitary condition is greatly improved, but there are only six of us who have not missed a day's work. I think it is more the hard work and heat than bad sanitary conditions that have exhausted us.

"Passed Asst. Engineer Scott has had to give up going on the ship, so I am the only naval officer on board.

"We have been greatly delayed by want of steam. The boilers are all right, but we have trouble with connections and new men not used to working together.

"The engines have been cleaned, and the starboard one, as previously reported, is in working order. The port-engine reversing gear is broken, and that engine can only be worked ahead, and handles with the throttle.

"The ship's company is shown by the list enclosed herewith. The *Vulcan* is able to spare these men, as the Illinois naval militia and men whose times of service have expired give her sufficient force. Lieutenant Blow, who will command the *Vulcan* while I am in this ship, has experience as well as ability, and you know my opinion of Lieutenant Gilmer. Nobody could have had better support than I have had in this work.

"The plan for towing is that the *Vulcan* tow the *Teresa* with a two-hundred fathom, fifteen-inch hawser, shackled to fifteen fathoms chain on this ship and two lengths of chain to the stern bitts of the *Vulcan*, stopped back to the quarter bitts. The *I. J. Merritt* will tow the *Vulcan* with a ten-inch tow line.

"Of course these arrangements will be changed as seems expedient, but they have been made after consultation and examination of all bitts, &c., by Captain Chittenden, Captain Wolcott, and myself.

"I have the honor to acknowledge the receipt of your orders. Captain Moore, of the *Leonidas*, has consulted also with Captain Blow and myself, and all arrangements for signals, &c., are completed.

"Very respectfully,

(Signed) IRA HARRIS, *Lieut. Comdr., U. S. N.*

"Captain C. M. CHESTER, U. S. N.,

"*Senior Officer Present.*"

2. The original report was made as we were consulting over the final plans for departure, after the ship had been moved to the lower part of Guantanamo Bay, early Saturday morning, and for want of proper facilities was written in pencil.

3. Owing to a check valve in one of the boilers giving out, this short trip had to be made without the ship's own engines, as was first contemplated. During the day an attempt was made to start the port engines, but it was not successful, and it is hoped another trial may give better results.

4. The *Teresa*, with the *Merritt* and *Vulcan* towing, the *Leonidas* and *Cincinnati*, got under way at 6 p. m., but it was some time after dark before the harbor was cleared.

5. The *Cincinnati* parted company with the wrecking fleet at 9.00 a. m. October 30th, off Cape Maisi. At that time the *Teresa* was steaming along using her starboard engine with about 30 revolutions and 100 lbs. of steam, and making a good six knots. Captain Harris reported that he hoped soon to have the port engine ready for use, in an emergency, but two boilers would not afford steam enough to run the two engines together, and his force was not sufficient enough to fire another boiler. Everything was running smoothly on the ship, and the weather was fine and the prospects for the trip north good, but it will probably take nine or ten days for the passage.

6. I would add that in the preparation of the *Infanta Maria Teresa* for sea Lieut. Comdr. Harris has been an indefatigable worker, and has

shown a tact in handling the conflicting interests prevailing that has won my admiration. But few of the men of the *Vulcan's* crew or those belonging to the wrecking co. have been able to hold out against the climatic and unsanitary conditions that have surrounded them, and the result of the work is creditable to all concerned.

7. I propose to leave this port immediately with the *Cincinnati* for Santiago de Cuba, where I have engaged to meet the wrecking steamer *Chapman* on Novr. 2nd, and make an examination, for report, on the wreck of the steamer *Reina Mercedes*.

Very respectfully,

C. M. CHESTER,
Captain, U. S. N., Commanding, Senior Officer Present.

The SECRETARY OF THE NAVY,
Navy Department, Washington, D. C.

Report of Lieut. George P. Blow, U. S. N., November 3, 1898.

U. S. S. VULCAN,
At Sea, lat. 28 18′ N., long. 74 12′ W., November 3, 1898.

SIR: 1. I have the honor to report the total abandonment and loss of the captured Spanish armored cruiser *Infanta Maria Teresa*, while in tow of this vessel and the Merritt-Chapman Wrecking Company's steamer *Merritt*, bound from Guantanamo Bay, Cuba, to Norfolk, Va., on Tuesday, November 1st, at 5.11 p. m.

2. As far as I can tell no lives were lost, all hands having been successfully transferred to the *Merritt* by two of the wrecking company's surfboats, both of which were hoisted on the port side of the *Infanta Maria Teresa*. The wreck was abandoned in a sinking condition in lat. 24 53′ N., long. 74 35′ W., about 45 miles from Watlings Island.

3. At 5.30 p. m. on Saturday, October 29th, the *Vulcan*, having the *Infanta Maria Teresa* in tow, and with the *Merritt* assisting ahead, started to leave Guantanamo Bay for Norfolk, Va. Owing to the length of the towing hawsers and size and difficulty of handling the wreck, it was 7.10 p. m. before we got out of the harbor and started ahead full speed. The *Merritt*, with 200 fathoms of 12-inch manila line fast to head bitts on the *Vulcan's* forward deck, led the tow. The *Vulcan* in turn was towing the *Maria Teresa* with 230 fathoms of 15-inch manila line, made fast to a chain span which was secured to the bitts on each quarter and backed to the bitts in either gangway. The U. S. S. *Cincinnati* and U. S. S. *Leonidas* accompanied the tow as convoy, taking position on either quarter of the wreck.

4. The weather on the night of Saturday, October 29th, was fair, but bad weather was threatening, the moon being almost obscured by a thick mist. The barometer ranged from 30.05 to 30.09. All three ships behaved well in the head sea caused by the trade winds, and an average speed of 6 knots an hour was made.

5. At 8.12 a. m. Sunday, Oct. 30th, Cape Maysi bore abeam, distant about 3 miles. Soon after (at 8.50 a. m.) the *Cincinnati* left us, making international signal "B. Q. R." (A pleasant passage). All during the

day the tow proceeded without difficulty towards Crooked Island Passage. The trade wind was fresh and the sea moderate, but the weather was damp, misty, and cloudy, making sights difficult. A speed of 5½ knots was kept up without effort, the *Vulcan* steaming at 50 revolutions only. The *Leonidas*, under orders to convoy us through the passage, remained on the port quarter of the *Infanta Maria Teresa*.

6. At 12.40 a. m. Monday, Oct. 31st, we sighted Castle Island Light, and at 3.40 a. m. passed it abeam. At 10.30 a. m. Bird Rock Lighthouse was also abeam. At 8.50 a. m. we passed the SW. point of Watlings Island abeam, distant about 3 miles, and proceeded up the Crooked Island Passage inside the island. At 10.10 p. m. the light on NE. end of Watlings Island was on our starboard beam, distant 10 miles, and at midnight it was broad off our starboard quarter, bearing SE., distant 15 miles (ship's course north). This data was obtained from a beam and quarter bearing, which was taken to plot our position for a final departure. The weather was cloudy and misty all day, but the a. m. time sights were obtained. The tow, being under the lee of the islands and in smooth water, made excellent progress, averaging a little over 6 knots. The *Leonidas* still continued convoying us, and kept her original position off the port quarter of the wreck.

7. Tuesday, Nov. 1st, began cloudy, damp, misty, and threatening. At 12.50 a. m. we lost sight of Watlings Island light, bearing about SE. x S., and distant 18 miles. At 12.55 a heavy squall from NE. struck the ship. The wind and sea continued to increase all through the day, with every indication of a cyclone, though our barometer remained high, and even rose from 30.06 to 30.24 at 8 p. m.

8. At 2.45 the *Teresa* signalled the *Vulcan*. "Signal *Merritt*, steer to windward." This was done, and we all changed course from N. to N. x E. ½ E. (wind and sea NE.). Slowed down our engines from 50 to 45, and finally from 45 to 40 revolutions, on account of head sea. Several times during the day the *Teresa* signalled us to know the barometer.

9. At daylight we found that the *Merritt* and *Teresa* were both pitching and rolling deeply, the latter making heavy weather of it, plunging her bows under and burying the forward deck up to the turret. It was also noticeable that large quantities of water came out of the recesses around hawsepipes in her bows, originally filled with wood, but burned out by fire. The *Vulcan* was riding easily, but with engines racing badly. The towlines both were working perfectly, and no undue strain on lines or bitts was noticeable.

10. The gale and sea continued to increase all during the forenoon of this day and it was soon obvious that the *Teresa* was in trouble. We repeated a message from *Teresa* to *Leonidas* several times, "Do not go so far ahead," but the signal, apparently, was not understood.

We also signalled, in answer to *Teresa's* question "What is direction and distance to Watlings Island," the answer, "SSW. about 30 miles." At noon *Teresa* signalled, "Ask *Merritt* if she can run to Watlings Island safely." This message was received and we then repeated *Merritt's* answer, "No." The *Merritt* immediately hoisted signal to the *Teresa*, "Give your orders." To this signal the reply was made to *Vulcan* (and repeated to *Merritt*), "Cast off *Merritt's* line and have her come under

lee side. Have *Leonidas* stand by on our weather side; we are going to abandon ship." This and a number of similar signals, which will be found in the log book and reports enclosed, were rapidly made and repeated with difficulty owing to the heavy gale blowing. The *Leonidas*, being some distance ahead, seemed unable to read our signals. The *Teresa* now signalled to the *Vulcan*, "Do not cast off our line yet," to which reply was sent, "Will hold on to the last and will assist you by using oil." The reply to this message was "Thanks." In repeating the above-mentioned signal to *Leonidas*, "to go to windward," etc., I also added "and use oil."

11. In obedience to *Teresa's* signal, the towline of the *Merritt* was, at 1.30 p. m., immediately let go, after giving her the whistle signals agreed upon (a copy of which is herewith appended). The *Merritt* reeled up her line and immediately took her position under the lee (port) quarter of the *Teresa*, and stood ready to receive her crew as they came over in their own (the wreckers') surfboats.

12. As soon as it was apparent that the *Teresa* was in trouble and was to be abandoned "All hands" were called and active preparations made to assist in every possible way in the work of rescuing her crew. The officers were all directed to assist and direct the men in this work, and all responded with energy and ability to the tasks allotted. The executive officer, Lieut. Gilmer, was directed to take entire charge aft, with full authority to cut away our towline immediately it became apparent that the ship was actually foundering. He was also given complete charge of all details regarding the work of preparation, and succeeded so well that the *Vulcan* was ready for any contingency in a remarkably short time. This work was most creditable to both officers and crew. The navigator (Ensign G. L. Holsinger) assisted the executive in this work and was later directed by me to prepare an improvised life gun and line, using the 6-pdr. H. R. F. guns for the purpose. Lieut. L. F. Smith was assigned to the duty of fitting and using oil bags and supplying oil. Ensign J. C. Summers had charge of all signals and signalmen, and also assisted in launching the life rafts. Passed Asst. Engineer J. L. Gow, ably assisted by Chief Engineer Simms, got up the oil from the hold and with his men supplied it to those stationed on deck to fill and tend the bags, water-closets, bathrooms, etc. Asst. Paymaster Robt. H. Woods acted as recorder and kept a record of times and events. Passed Asst. Engineer Jos. A. Scott and Asst. Engr. Neilsen were on watch in the engine room and handled the engines most satisfactorily, in spite of the heavy sea and tendency to race. All the other officers, who had no particular assignment made them, were on deck and assisted in every way in their power in the work of preparation.

13. Two barrels of oil were gotten aft and bags fitted for using it efficaciously. A call for volunteers to man two lifeboats, made by the executive officer, was immediately answered by an ample force, and the boats were made ready for lowering and fully supplied with everything necessary, including provisions, water, and oil. All the life preservers were gotton up, inflated and distributed, ready for use in the boats or life rafts, or to throw to people in the water. Two life rafts were equipped and lowered with long lines attached, and were dropped down to the wreck. These rafts did not reach the *Teresa*, but were blown away from

her. One was hauled back, but the other fouled the hawser, capsized, and broke adrift. Besides the above-mentioned preparations, bowlines were provided to throw to men in the water should it become necessary to let go our towline and steam down to leeward, in case the wreck should sink suddenly. Two 6-pdr. R. F. guns were converted into "life guns" (for throwing life lines) by reducing the charges and utilizing part of a weighted oar, with a line attached, as a projectile. In all these preparations Lieutenant Gilmer, the executive officer, had direct charge. He, and in fact all the officers as well as crew of this vessel, worked with the very greatest energy and judgment, and vied with each other in their efforts to be of assistance and ready for any and all emergencies. There was no noise or confusion of any kind, and the work was rapidly and well done.

14. Fortunately, none of the preparations above mentioned were needed, however, as the work of rescuing the crew and volunteers (108 in number) was nobly done by the *Merritt* and the *Teresa's* own surfboats and crew. The *Teresa* had three of these boats, two of which fortunately were on the port side. Both of these two were lowered, as was also a catamaran. The boat on the weather (starboard) side of the *Teresa* was not lowered, nor was the catamaran used. The two boats together made seven round trips in all, and, as far as we could see, rescued all hands without an accident. This was a most remarkable and creditable performance, considering the heavy gale with the rough broken sea running at the time.

15. The part planned by this vessel in the rescue consisted in steaming ahead slowly and thus holding the *Teresa* up to sea. By this means our oil (which we used freely and with excellent results) was distributed where it was most needed. At the same time the little headway given the *Teresa* enabled her officers, with helm hard a starboard, to keep the sea on their starboard bow, thus giving the rescuing boats a little "lee," which was made safer by the effects of our oil bags. The man at the *Teresa's* wheel was the last to leave his post, and it was evident from this and their frequent signals not to let go our line that this plan was approved by Capt. Harris and Capt. Chittenden, on the wreck. The men who volunteered on the *Vulcan* for the lifeboats stood with their life belts on, anxious to go, but I would not allow the boats to be lowered in such a sea, except in the very greatest emergency—that of the sudden foundering of the wreck. As we could not let go our towline and go down to leeward, therefore, and as no men were in the water, the lifeboats, life buoys, life rafts, life gun and line, and bowlines were not used, but all was ready had the occasion required them.

16. The *Vulcan* succeeded in keeping the *Teresa* head to sea (NE.) until about 5 p. m., when the latter, having nearly filled with water, became too heavy to manage, and as the *Vulcan* drifted faster than the *Teresa* both vessels swung around to N. by W. In this position the *Teresa* made an excellent breakwater for the boats, and being sluggish and waterlogged, did not roll so heavily as to interfere with the work of rescue. So situated, however, the oil from the *Vulcan* could not reach the wreck, which was no longer to leeward, and its use was discontinued. It is believed that the *Teresa* herself, however, used oil with good effect.

17. The work of rescue was begun at 2.20 p. m., when the first boat

was lowered from the *Teresa*. The second boat was not lowered until 3.19 p. m. By 4.54 p. m. the last boat load had been taken off and all the crew saved. The work done by these men and by the *Merritt*, which had to manœuver in a heavy broken sea, is beyond all praise and excited our admiration and applause.

18. At 2.55 the *Teresa* again signalled, "Do not let go your towline yet." *Vulcan* answered, "All right; will hold on until the last." All this time men with axes were standing by ready to cut away the line should the wreck sink suddenly. At 4.12 the *Teresa* signalled, "Two more boat loads and all will be off." At 4.54 the last boat left the *Teresa* and was safely rescued alongside the *Merritt*. Fearing that some one might have been overlooked, we held on to the towline still, and searched the wreck with our glasses through the rain and spray for some sign of life. By this time the wreck was low in the water and waterlogged. She shipped quantities of water with every sea and was evidently settling rapidly. After making sure that the boats had finished in their work of rescue, and that all had been taken off, finally, at 5.11 p. m. and just at dark, I gave the order to cut away the towline. At the same instant three cheers were spontaneously given by the *Vulcan's* crew for the American ensign which was still floating from the wreck, and for a brave piece of rescue work well planned and splendidly executed.

19. Upon clearing the wreck, which immediately disappeared in the darkness, the *Vulcan* hove to, heading NE. by N., with engines turning as slowly as possible. The *Leonidas* and *Merritt* did the same, but headed about NE., and we remained in sight of each other near the wreck, which probably floated two or three hours. At 7.00 p. m. the *Merritt*, which was close under our stern, put her helm aport, steamed off, and disappeared. The *Leonidas* was lost sight on our port quarter about 9.30 p. m. Neither vessel made any signals, though we were close to each, and both seemed to be safe and in good condition. The gale lasted all night, moderating slightly about daybreak.

20. As soon as daylight came the *Vulcan* "wore ship" and steamed down on a general SW. course, zigzagging across to pick up her consorts. The *Leonidas* was sighted at 6.50 a. m. heading NE. I signalled and asked her if she had seen the *Merritt*, but got no answer, as we rapidly passed her. She soon turned around, however, and joined in the search for the *Merritt*, following us for about 12 miles. In this way it is believed that all the probable and possible ground over which the *Merritt* could have passed while "hove to" was thoroughly searched. I had not expected to find her, as I believed that she had started for New Providence Channel or Nassau soon after dark to seek shelter and get rid of her large number of passengers.

21. At 8.50 the *Vulcan* steamed for the *Leonidas* and hoisted "Inter. 5884" (permission to proceed), and also wig-wagged, "One of the sick wreckers reports *Merritt* perfectly seaworthy and well stocked with provisions and water. He thinks she has gone to Key West to land Cubans" (employed as laborers by wrecking co.). The *Leonidas* answered with affirmative pennant, directing us to proceed, and added the wig-wag signal, "We will stand by until 4 p. m. unless we sight them sooner."

22. During the rest of the day the fresh NE. gale, with a fluctuating barometer, continued, increasing toward night and with every indica-

tion of developing into a cyclone. At 5.40 "hove to," heading NE. by E. ½ E., to watch shifts of wind. At 7.40 p. m. decided to steam to the eastward and allow the storm to pass us. The course was accordingly changed to ENE., and the engines started up again and limited to 40 revolutions. By midnight it was found that the weather was not improving, so the course was again changed to north. From this time on the wind and sea have been decreasing gradually and the weather greatly improved.

23. I have the honor to enclose herewith the individual reports of various officers of this vessel, together with a copy of the whistle code and complete list of the crew of volunteers on board the *Infanta Maria Teresa*, under the command of Lieut. Commander Ira Harris, U. S. Navy, the regular commanding officer of the *Vulcan*.

Very respectfully, your obedient servant,

GEO. P. BLOW,
Lieutenant, U. S. Navy,
Commanding (temporarily) U. S. S. Vulcan.

The honorable SECRETARY OF THE NAVY,
Navy Department, Washington, D. C.

Deposition of Capt. French E. Chadwick, U. S. N., for libellant.

Examination of witnesses (taken pursuant to section 863 of the Revised Statutes of the United States and the notice hereunto annexed, marked "Exhibit A") on Monday, May 21, 1900, at No. 1420 F street, in the city of Washington and District of Columbia, before Louis Beyer, jr., a notary public in and for the said District, in the above-entitled cause.

Met pursuant to notice.

Present, James H. Hayden, esq., counsel for the libellant; William B. King, esq., counsel for certain captors; Charles C. Binney, esq., special attorney representing the United States, and Louis Beyer, jr., notary public.

It is stipulated by and between counsel that Louis Beyer, jr., be substituted for the notary public named in the said notice.

FRENCH E. CHADWICK, a witness produced on the part of the libellant, being duly sworn, deposes and says in answer to interrogatories propounded to him by Mr. Hayden, of counsel for the libellant, as follows:

1. Question. Please state your name and rank.

Answer. French Ensor Chadwick, captain, United States Navy.

2. Question. Captain, upon what duty were you engaged during the early summer of 1898, particularly the months of June and July?

Answer. I was in command of the *New York* off and near Santiago.

3. Question. And took part in the engagement off Santiago on July 3?

Answer. Yes.

4. Question. And you noted the various incidents which took place during that engagement?

Answer. Yes.

5. Question. What Spanish ships of war took part in that engagement?

Answer. The *Maria Teresa*, *Almirante Oquendo*, *Viscaya*, *Cristobal Colon*, and two torpedo-boat destroyers, the *Furor* and *Pluton*, I think they were.

6. Question. What became of the *Infanta Maria Teresa* in that engagement?

Answer. She was run ashore about 5½ nautical miles west of the entrance to the harbor. She was afire when she grounded in a small bay.

7. Question. How close did you come to the *Teresa* during that engagement?

Answer. Probably within a mile; i. e., we passed that distance from her as she was burning ashore.

8. Question. How soon after the engagement did you go aboard of her or examine her?

Answer. I was aboard the afternoon of the 4th or 5th of July, I forget which; I think it was the 5th.

9. Question. I hand you a diagram, which appears on the page following page 571 of part of the report of the Secretary of the Navy for the year 1898, known as the appendix to the report of the Chief of the Bureau of Navigation. Please examine that and state whether it correctly represents the position of the *Teresa* as she lay upon the beach.

Mr. BINNEY. There are several diagrams there; which?

Mr. HAYDEN. The first diagram.

Mr. BINNEY. Now, what is the question; what is he asked to state? (The question is read.)

Answer. I should say it did.

10. Question. What was the character of the shore or beach upon which she was stranded?

Answer. The shore line was coral, and there was more coral rock ahead and on her port bow. The bottom, I was given to understand, was smooth sand, in a general way.

11. Question. I now invite your attention to eight diagrams, which apparently are reproductions of photographs taken of the *Teresa*, and follow the one to which your attention was invited by the previous question. Please state what they show.

Answer. In a general way they show her situation and condition very well. They give a rougher idea of the outside of the ship than the actuality, rather.

12. Question. How critical and thorough an examination of the *Teresa* did you make?

Answer. I was on board of her two or three times—I forget now whether it was two or three—and I went over her pretty thoroughly fore and aft. All her wooden decks were burned away, but there was no upheaval of her protective deck, as there was in the case of the *Oquendo*, which lay a little to the westward, the forward magazine of which latter, I think, exploded and disrupted the armor belt and a good deal of the protective deck.

13. Question. What was the structural condition of the vessel when you examined her?

Answer. It appeared to me so good that I said to one of the officers who was with me—I think it was Lieutenant-Commander Staunton, though I am not sure of that—that there should be no difficulty whatever in getting her off and repairing her. I made a pretty close examination of the exterior of the ship with this idea. I could see no deformation of her lines at all. Her protective deck was, if I remember rightly, intact, and everything below that was in good order, excepting the disorder arising from immersion in water.

14. Question. What was the condition of her boilers and machinery?

Answer. That was understood to be good, and of course was shown to be good, because they were utilized later for propulsion. I think her engines were turned over with her own steam a number of times while she was still ashore. I would modify what I am saying thus: Later it was shown that she was held fast by a rock which had pierced through her outer bottom. That was a later discovery.

15. Question. What damage had the vessel received from the gun fire of the American vessels which took part in the engagement?

Answer. There was no damage of that sort which could not easily be repaired. The repairs necessary to put her in a condition for service would have involved the replacing of a great many of her beams, and one may say a general reconstruction of the interior above the protective deck; that is, the beams were a good deal warped by the fire, but her top sides were, I think, in good condition, with the exception, of course, of her minor injuries from gun fire.

16. Question. Do I understand you to say that her beams had been distorted by projectiles from the American vessels?

Answer. No; warped by the burning of the decks.

17. Question. What damage had the vessel sustained through internal explosions, if any?

Answer. I do not think there was any internal explosion aboard the *Teresa* sufficient to do any great damage; that is, any damage to the structure—anything but minor damage. There may have been the explosion of some cartridges, but there was no explosion of the magazines, as I remember; in fact, I know there was not, because that would have blown up her protective deck.

18. Question. I invite your attention to one of the diagrams which you have already seen, entitled "*Infanta Maria Teresa*. Showing explosion of shell which entered coal bunker, exploding there and igniting coal." What damage did the ship sustain as the direct result of the explosion of that shell?

Answer. Well, I think there was no great structural damage on that account, unless there might have been some warping of beams and internal arrangements from the heat of the burning coal, if the coal burned out, which it possibly did and probably did.

19. Question. What damage did the vessel sustain as the result of the burning of her decks and coal which you have mentioned?

Answer. Well, there was no damage, excepting such as was easily reparable.

20. Question. To what parts of the vessel did it extend, and how serious was it in different parts?

Answer. It was all above her protective deck. A great part of a ship, you know, lies below her protective deck; that is, all the machinery, her magazines, and her boilers and engines. I suppose one might say that considerably more than half the value of the ship, taking that as a base plane, is below the protective deck—a good deal more, very much more than half the value. Her armor was intact—perfectly sound. Her turrets were practically intact, I think were altogether intact.

21. Question. What was the condition of her guns?

Answer. That is difficult to say. I think that her forward 11-inch gun was in good condition. I do not think that that had been affected particularly. That had been affected less by the fire than the after one. It is impossible to say offhand whether the guns had been rendered unserviceable or not, though there was no apparent warping of the guns. The probability is that they were not injured to that degree that would not enable them to be used again, as one of her guns went off one day while we were lying near her. The decks smoldered for some time, and though there was no suspicion of any danger remaining, one of her 5-inch guns suddenly set itself off and sunk a boat which was lying near by, a small press boat.

22. Question. What injury did the machinery of the vessel sustain from the influx of sea water into the hold of the ship?

Answer. I do not think any material injury was sustained, as machinery may be under water a long period without any marked injury. My recollection is that Mr. Sharp told me that he had raised a steamer which had been over six months immersed, and that when she went again into service she used the same machinery; that she was not materially injured.

Mr. BINNEY. The latter portion of the answer objected to as hearsay.

23. Question. What damage, if any, did the vessel sustain to her outer bottom or skin by coming in contact with the beach?

Answer. I should not think there was any material damage arising from that. She went on at very low speed, and any damage of that sort probably arose from her settling with the tide and by having her bottom pierced at one point, at least, by a rock that protruded through the sand which generally covered the bottom where she lay.

24. Question. What would be necessary to repair such damage as that done by a rock piercing the outer skin of the ship as she settled on the beach?

Answer. To thoroughly repair a piece of damage of that sort it would be necessary to put the ship in dock, but the damage could not have been great, because the ship was repaired and went to sea without being docked.

25. Question. How could such damage be temporarily repaired for the purpose of floating the vessel?

Answer. I do not know how it was done in this instance, but the point of damage could be bulkheaded off, dammed off—as, for instance, if a hole were through that floor there [indicating floor] a construction could be built around, so that water coming through would not invade any other portion of the ship; a little box could be built around it. That would be one means of doing it. I do not know how it was done. There are several ways of doing that. If it was a small compartment,

which it probably was, they could close the compartment entirely and just leave the water free access at that point.

26. Question. How much water was there in the vessel when you visited her on July 4 or 5?

Answer. Well, she was lying on a slope, her bows a good deal higher than the stern, and the water was in over the after part of the protective deck. There was not nearly so much forward.

27. Question. Please indicate, on the plat to which your attention was first called, where the protective deck of the vessel would come with reference to her normal load water line.

Answer. Slightly above her load water line, as I have indicated in pencil on the plat which you mentioned. The protective deck was flat, laid from the upper edge of the armor belt, and this armor belt must have been, at her normal displacement, about 2 feet above the water line.

28. Question. How far did it extend toward or below the water line from 2 feet above?

Answer. I think the armor belt was 5½ feet in width, so that there would be 3½ feet below. It was either 5 or 5½ feet in breadth. If it were the former, of course it would only be 3 feet below the water line and 2 feet above.

29. Question. How did the water from the sea find its way into the hold of the vessel?

Answer. I think through those holes which were pierced forward.

30. Question. By rocks?

Answer. By the rock in the sand. My impression is that this hole was not far abaft the forward turret, and I think that most of the water came in there, and I am also under the impression that she had a shot hole in her port quarter.

31. Question. Captain, what knowledge or information have you with regard to the recovery or floating of stranded vessels?

Answer. Well, some very difficult cases have been dealt with. A very notable case is that of the *Paris*, of the American Line, which was stranded last year on the coast of England.

32. Question. Are you familiar with the facts with regard to her stranding and recovery, as reported?

Answer. In a general way I am.

33. Question. What injuries did she sustain?

Answer. She went ashore on a rocky coast, and was held in her place by having her bottom pierced in several points by large rocks, which came up through both the outer and inner bottoms. Her injuries in this regard were very much more extensive than those of the *Maria Teresa*, and it was a much more difficult case for recovery.

34. Question. What steps were taken in floating the *Paris* from the position in which she was held on the shore?

Answer. If I remember rightly, the localities of the injuries were bulkheaded off by water-tight bulkheads, and of course after that her cargo was discharged and the ship lightened as much as possible. The water was pumped out of the remaining compartments until the ship was lifted above the rocks which held her in place, the rocks being also blasted away, as I remember.

35. Question. Did the rocks which pierced the bottom of the *Teresa* as she lay on the beach protrude through her inner bottom?

Answer. I am not sure about that, but my impression is that they did not. I can not answer that definitely. I say that I think they did not, because it was some time before it could be found what prevented her being dragged off. It was thought at first that merely tautening the hawsers which were laid out astern would cause her at high tide to move. She was so lightly grounded that at high tide, after her compartments in general were freed of water, there was a good deal of motion at times on her. It was only after careful examination, if my memory serves me, that these injuries—the cause of her being held in place—were located.

36. Question. In the case of the *Paris* was any doubt ever entertained as to her being a salvable ship?

Answer. There were doubts about their ability to get her clear of the rocks.

37. Question. In the case of the *Teresa* was there ever a doubt of the possibility of floating her?

Answer. No; oh, no.

38. Question. What have you to say with regard to her salvability on and after the engagement of July 3?

Answer. Well, I always regarded her as a ship certainly to be saved. I never had any doubt about that; not the least.

39. Question. So far as you know, was any doubt entertained by any officers of the Navy who examined the vessel and were familiar with her condition?

Answer. No; nor was there any doubt, so far as I know, in the minds of the wrecking people.

40. Question. I invite your attention to the report of the board appointed on July 13 to examine and report on the condition of the *Teresa* and other Spanish vessels. The material portion appears on pages 574 to 578 of the Appendix to the Report of the Chief of the Bureau of Navigation for 1898. Do you find the statements contained in that report correct?

Answer. This report says that the frames above water were practically intact, having only deformation, more or less, due to heat, and that they are doubtless intact below water. For the purposes of solidity they may be considered practically intact. They speak of the deck beams above water as more or less warped by heat, as I have mentioned. This report corresponds with the opinions I have expressed, particularly that the structural solidity of the ship was not to any considerable degree injured. The report said that, barring local distortions, which were small, the hull was practically intact, and I would say that these local distortions were very small. There is no question, of course, that the machinery was in fair condition and was not materially injured, seeing that she was moved under her own steam later.

41. Question. Captain, to what extent, if at all, did the injuries which the vessel received from gun fire, the fire which occurred on board of her, the explosion of any shells aimed at her by the American vessels, and the injury to her bottom occasioned by her grounding impair her character as an efficient ship or a vessel capable of being navigated without repairs?

Answer. Something, of course, was necessary to strengthen her longi-

tudinally. You see, a ship is a great girder, and the upper part of this girder was removed—that is, her decks were removed—and it is like taking off, say, the upper plating of a bridge girder or anything else of that sort, so that in case she was to be subjected to the strains of a heavy gale of wind there was danger of her distortion unless something was done to strengthen her in her upper works or about the upper decks, which, I suppose, was done at Guantanamo. I would say that that has no real bearing upon her salvability, of course, because that work could be done anywhere. Work sufficient to strengthen her could be done anywhere—Guantanamo, Santiago, or any place where material and means for working material existed.

Mr. KING. What was the nature of the works that would be required?

Answer. I should say running a series of plates fore and after on the upper deck—a continuous series of plates which would take up some of the longitudinal strains which result from a ship pitching at sea. You see, sometimes in a heavy sea the bow or stern is unsupported. She rises and falls heavily, and then there is a tendency to break in two—that is, to bend the whole ship—and the upper decks assist greatly in resisting a strain of that sort.

42. Question. How material was the injury to her woodwork?

Answer. All her woodwork was burned away.

43. Question. How serious is such an injury to a modern steel ship like the *Teresa?*

Answer. Well, it is not an injury of great moment—that is, it is not an injury which can not be easily repaired.

44. Question. It does not change her character from a ship into that of a wreck?

Answer. Oh, no; not by any means.

Mr. KING. What relation does such an injury bear to the essential structure of the vessel?

Answer. It is a moderate injury. It does not affect the general structure of the ship to any great degree. The strength of a ship lies in her sides, her steel decks—the great strength, I mean—and in her beams. The transverse strains, of course, are not the serious strains, unless there are very heavy weights on the upper decks. Her upper deck, being of wood, did not offer as good a security against longitudinal strains as if it had been of steel. The burning away of the wood is a thing that could be very easily replaced.

45. Question. The steel decks of the vessel below were in what condition? What was their efficiency in the way of supplying support against longitudinal strain?

Answer. Her protective deck was uninjured. There was no injury to her protective deck.

46. Question. What office would that perform in taking up longitudinal strain?

Answer. Oh, very great.

47. Question. I invite your attention to the reply of the Secretary of the Navy of January 29, 1900, which is a matter of record in this case. You will find appended to it a report of the board of survey containing an appraisement of the value of the *Teresa*. What have you to say with regard to that?

Answer. The appraisal is unquestionably very much too low.

48. Question. Please give your reasons for holding that opinion.

Answer. Well, to begin with, her armor could not have cost less than nearly $400,000, if not more.

49. Question. That was intact?

Answer. Which was intact. That is to say, her turret and side armor. Her machinery was worth not less than $700,000. Her structure below the water line represented at least one-half of the whole structure. I should say that a very moderate valuation of the ship as she lay on the beach was $1,500,000; that all the parts of her structure and machinery which were intact as she lay there could not be replaced for that amount of money—not anywhere near.

50. Question. What, in your judgment, would be the cost of a vessel like the *Teresa*, fully armed and equipped as she was on the morning of July 3, prior to the engagement?

Answer. About three and a half millions.

51. Question. What, in your judgment, would have been the cost of repairing her and restoring her as nearly as possible to that condition after the battle?

Answer. I should say certainly well within a half million, supposing her armament to have been still serviceable.

Mr. KING. You mean to include the armament in the estimated total value?

Answer. Yes.

52. Question. What means have you had for ascertaining the cost of naval vessels in general and of vessels of the *Teresa* class?

Answer. In answering this question I am answering somewhat from my knowledge of the cost of our own ships. I think the *Maria Teresa* may be compared with the *New York*, and that probably her cost to build would be very nearly the same in our country. The cost of the hull and machinery of the *New York* is laid down in the report of the Bureau of Construction for 1896 at $2,985,000. This, I believe, is exclusive of all the armor, which was appropriated for under a separate appropriation, armor and armament; am I not right?

Mr. HAYDEN. Perfectly.

WITNESS (continuing). So that I should say that the value of the *Teresa* on the morning of July 3 was at least what I have stated, including her armament.

53. Question. To what extent, if at all, would the injuries sustained by the *Teresa* on July 3, 1898, interfere with her subsequent repair and use as a vessel of the United States Navy?

Answer. Would not interfere at all. It was just a mere question of work—that is, I mean there would have been no great difficulty involved in such repairs. The most difficult parts of the ship to build were still intact.

54. Question. Kindly name those.

Answer. Well, all the portions from the protective deck down, the machinery and machinery spaces, the laying of the protective deck itself, the fixing of the armor—by far the most valuable part of the ship was still serviceable.

55. Question. In your opinion as an officer of the Navy, familiar with the construction and navigation of vessels and of the weather encoun-

tered in the vicinity of the West Indies, could the *Infanta Maria Teresa*, after July 3, 1898, have been repaired so that she could be brought to the United States for permanent repairs? In answering this question please give your reasons fully for the opinion that you entertain.

Answer. There was no reason to suppose that she could not safely reach the United States; though, being a ship far from being thoroughly repaired, it would have been prudent to have brought her by a course where gales could have been avoided. I mean by the Bahama Channel, and where refuges could have been found, and smooth opportunities could have been watched for to go from point to point up the coast. That she was in a general way seaworthy is shown by the fact that she rode out a severe gale and that she was lost by stranding.

56. Question. The *New York*, which you commanded, was Admiral Sampson's flagship, was she not?

Answer. Yes.

57. Question. Was the final abandonment of the *Teresa* ever contemplated? At least, contemplated after you had examined her?

Answer. Oh, no. The general consensus of opinion was that she was to be got off the beach. There was no dissent from this.

58. Question. What steps, if any, were taken to preserve her from further injury in her stranded position?

Answer. There were no steps taken. None were considered necessary. She lay in a very easy position and with the usual weather off that coast she was subject to no injury.

Cross-examination by Mr. BINNEY.

1. Cross-question. How long did you remain off Santiago after the battle?

Answer. I think we were there until July 18 or 19, or possibly a little later.

2. Cross-question. Did you ever see the *Teresa* after you left?

Answer. You mean after that date?

3. Cross-question. Yes.

Answer. I can not say. I think we came back off the port again and we saw her then; though I am not sure about that.

4. Cross-question. Had the operations for floating the *Teresa* begun at the time you left, about July 19? That was the date you said, wasn't it?

Answer. We were at Guantanamo, 40 miles from Santiago, until August 12.

5. Cross-question. By July 19, when you left the immediate neighborhood, had the operations for floating the *Teresa* begun?

Answer. I do not think they had. No, I do not think they began until after we got into Guantanamo Bay.

6. Cross-question. Did you have an opportunity of inspecting the *Teresa* again after July 19?

Answer. I must have had, because I remember being on board there with the wreckers at work. Yes; decidedly, yes.

7. Cross-question. How long were you there when the wreckers were at work?

Answer. We spent a good part of a day, I think. The flagship, I think—the *New York*—went around there and we removed a large quantity of chain from the ship to lighten the ship forward. We sent a large

number of men on board to do this work and the wreckers had been at work on her then for quite a little while. I do not remember the date of this visit.

8. Cross-question. When you say "we" spent a large portion of the day there, do you mean that you were personally on the *Teresa* for a large portion of that day?

Answer. I was on board for some considerable time.

9. Cross-question. About how long were you on board?

Answer. Well, I should say probably two hours or more.

10. Cross-question. Not over three hours, probably, you mean?

Answer. Probably not over three hours; no.

11. Cross-question. How far had the operations for floating the *Teresa* progressed at that time?

Answer. They had hawsers laid out astern which were set taut. They had had fires under her boilers. She was pumped out Her engines had been moved, I think, and in a general way everything had progressed very well. The reason of our going, if my memory serves me, was that we were much surprised at her not moving with the strain on the hawsers. They were laid astern and it was only about that time that the wreckers had become convinced that she was held in place by something which had pierced her bottom, and we went there to assist in lightening her, if I remember correctly.

12. Cross-question. Can you give approximately the date which you refer to?

Answer. No; I can not without referring to the *New York's* log. That would show it; but it must have been before August 12, because we started north on August 12. Probably some time between July 17 and August 12.

13. Cross-question. It was some time after that before the *Teresa* was finally floated, was it not?

Answer. I do not think it was long after that. I do not think she had been got clear by August 12, but I think she was cleared shortly after that.

14. Cross-question. Then you do not think that it was not till several weeks after that that she cleared?

Answer. I really can not say. I do not remember. My impression is that she was got clear shortly after that.

15. Cross-question. But not while you were there?

Answer. Not until after we had left.

15½. Cross-question. You have testified with regard to the condition of the *Paris* when on shore off the coast of England, and of her ultimate recovery. How is your knowledge of the facts that you have stated derived?

Answer. From the general reports in the papers regarding the wrecking operations.

16. Cross-question. By "in the papers" do you mean the newspapers of the day?

Answer. Yes.

Mr. BINNEY. All the statements of the witness in regard to the *Paris* and her recovery are objected to as matters of hearsay.

17. Cross-question. Have you ever been connected with the Bureau of Construction and Repair, United States Navy?

Answer. I have had no other connection than that of an officer of the Department. I was Chief of the Bureau of Equipment and also Chief Intelligence Officer at one time, and in each of those positions I was an ex officio member of the board on construction.

Mr. KING. What years did you serve in those two positions?

Answer. I was Chief Intelligence Officer from 1892 to 1893, and Chief of the Bureau of Equipment from 1893 to 1897—July, 1893, to September, 1897.

18. Cross-question. The construction and repair of vessels of the United States Navy is under the charge of officers who are specially trained for that service and who perform no other service. Is not that the case?

Answer. Yes; they design, construct, and repair ships.

19. Cross-question. You have never, then, belonged to that particular branch of the service?

Answer. Never.

20. Cross-question. Are you acquainted with Rear-Admiral Frederick Rodgers, who appears to have signed the report which was submitted to you?

Answer. I am.

21. Cross-question. Do you consider him an officer competent to report with reference to the value of a vessel like the *Teresa* at the time he reported on her?

Answer. His knowledge in a general way is such as mine would be.

22. Cross-question. Is Rear-Admiral Rodgers your senior in the service?

Answer. He is.

23. Cross-question. By how many years, do you know, about?

Answer. Probably three.

24. Cross-question. Are you acquainted with Commander W. H. Emory?

Answer. Yes; I am.

25. Cross-question. Do you consider him a competent person to report on the value of a vessel like the *Infanta Maria Teresa* at the time that he reported?

Answer. Commander Emory has the general knowledge of ship construction which all naval officers who have dealt with ships a good deal have.

26. Cross-question. Please answer my question more particularly as to your opinion of his competency.

Answer. He is as competent a judge as other line officers of his position and experience.

27. Cross-question. I was not asking you to compare him with other naval officers, but simply whether you consider that he was a competent person to make a report upon the value of the *Infanta Maria Teresa*.

Mr. HAYDEN. Objected to as incompetent and inadmissible. The witness was asked to express an opinion of the appraisement embodied in the report. He was asked to give his opinion of the value of the vessel in view of the fact that he had personal knowledge with regard to her condition. It does not appear from the report what information on the subject was obtained or was obtainable by Admiral Rodgers, Commander

Emory, and Commander Roelker for the purposes of this appraisement. It was not intended to reflect upon their competency or ability, but to get the opinion of a witness who knew more about the subject than it was possible for them to obtain without having seen the vessel on the beach at Santiago. In answering the question the witness is advised that the sole object of taking up this matter on direct examination was to obtain his opinion of the appraisement of the vessel's value based on his information, not, of course, for the purpose of criticising the appraisement made by other officers without complete or perhaps without any personal knowledge. I protest against the question as one calculated to place the witness in an embarrassing position, besides being utterly incompetent and immaterial. The capability of the officers composing the board is in no wise attacked, but the witness was asked to give an opinion based upon entirely different information, which, it is believed, the members of the board could not have obtained when called upon to appraise the vessel. Therefore the witness is advised not to answer the question.

Answer. I am quite ready to say that Commander Emory is as capable of forming an estimate of the value of a ship as most officers of his position.

28. Cross-question. Can you say the same in regard to Commander Roelker?

Mr. HAYDEN. Objection repeated.

Answer. I can.

29. Cross-question. The *Teresa* could not have been floated by means of any appliances which were on board the vessel at the time that you saw her after the battle, could she?

Mr. HAYDEN. I object to the question as immaterial and irrelevant.

Answer. Of course all tackles and the ordinary appliances that would be distributed about the upper decks were burned. There were probably some wire hawsers below which could have been utilized. There were no boats left, which were necessary for carrying out anchors, so that, generally speaking, she could not have been floated by means which belonged to the ship herself. Exterior aid was necessary.

30. Cross-question. Could she have been pumped out by means belonging to the ship herself?

Mr. HAYDEN. Same objection.

Answer. No; she first had to be freed from water by the wrecking pumps and then to keep clear of water by her own steam pumps.

Redirect examination by Mr. HAYDEN:

1. Redirect question. Captain, on cross-examination you mentioned the fact that line officers of the Navy have a general knowledge of the construction of vessels. Please give in some detail what opportunities are afforded them for gaining knowledge on those subjects both in their education and in their experience in service, both in the Navy Department and in navy-yards, as well as at sea.

Answer. Naval architecture is studied at the Naval Academy to a certain degree by all cadets, or at least was, and I suppose is now. The officers attached to ships have to have a very intimate knowledge of them. Once every quarter the ship is inspected throughout. Officers crawl into every compartment and through the double bottoms, and become in time most intimately acquainted with every detail of the ship.

They are with the ship frequently in dock and also while she is under repairs, and it is impossible to live in a structure of the kind and not have an intimate acquaintance with it, and deal with the subject as it is dealt with in the Navy Department by officers, who, for instance, are attached to the board on construction, without acquiring in time a very considerable knowledge of a ship and her cost. Some have better opportunities than others; for instance, an officer who is naval attaché has opportunities of knowledge which are in reality forced upon him by the necessity of reporting upon every detail of a ship and her armament and machinery, which officers not on that duty do not have. Officers must necessarily vary in their knowledge through varying opportunity for the acquirement of it; but no officer can live in a service such as the Navy for thirty or thirty-five years without knowing a good deal regarding material which he handles. A good many officers act as inspectors of ships building and see the ship in nearly all of her stages of advance; as, for instance, I myself was inspector of the building of the *Maine* for a very considerable period and had a good deal to do with her interior plans.

By the NOTARY:

Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. Nothing occurs to me at this time.

F. E. CHADWICK,
Captain, U. S. Navy.

Subscribed before me this 22d day of May, 1900.

LOUIS BEYER, Jr.,
Notary Public.

Deposition of Lieut. Commander Sidney A. Staunton, U. S. N. (for libellant).

Examination of witnesses (taken pursuant to stipulation before Louis Beyer, jr., a notary public) on Tuesday, July 24, 1900, at No. 1420 F street, in the city of Washington and District of Columbia, at 3.30 p. m., in the above-entitled cause.

Met pursuant to agreement of counsel.

Present: Mr. James H. Hayden, counsel for the libelant; Mr. William B. King, counsel for certain captors; Mr. Charles C. Binney, special attorney representing the United States, and Mr. William E. Harvey, counsel for the officers and enlisted men of the U. S. S. *Harvard*. Louis Beyer, jr., notary public.

It is stipulated by and between counsel that the examination may proceed before Louis Beyer, jr., a notary public, a commissioner of the court not being available.

SIDNEY A. STAUNTON, a witness produced on the part of the libelant, being duly sworn, deposes and says, in answer to interrogatories

propounded to him by Mr. Hayden, of counsel for the libellant, as follows:

1. Question. Please state your name and rank.

Answer. Sidney A. Staunton; lieutenant-commander, United States Navy.

2. Question. Upon what duty were you engaged during the spring and summer of 1898, particularly on July 3?

Answer. From a period dating about three weeks before the outbreak of the war with Spain and until the end of that war I served in the *New York*, the flagship of the North Atlantic fleet, on the personal staff of Admiral W. T. Sampson, commander of the fleet.

3. Question. Where was the *New York* on July 3, 1898?

Answer. Off the harbor of Santiago de Cuba.

4. Question. You witnessed, did you not, the occurrences of the engagement?

Answer. I saw them.

5. Question. What Spanish vessels took part in that engagement?

Answer. The armored vessels *Maria Teresa*, *Almirante Oquendo*, *Vizcaya*, and *Cristobal Colon*, and the torpedo-boat destroyers *Furor* and *Pluton*.

6. Question. As a result of that engagement, which of the vessels were captured and which were destroyed?

By Mr. BINNEY. Question objected to for the reason that it involves an expression of opinion on the part of the witness as to what constitutes destruction.

By Mr. HAYDEN. It is perfectly competent for this witness, an officer of the Navy, and therefore an expert in naval matters and a witness of the events which transpired during the engagement of July 3, 1898, to express such an opinion, and it is to obtain such an opinion that the question is asked.

Answer. The *Maria Teresa*, *Oquendo*, and *Viscaya* were run ashore in the order named, burning. The *Maria Teresa* was afterwards found to be in such condition as to be worth the expenditure of the money and time consumed in getting her off the beach with a view to repairing her, while the *Oquendo* and *Viscaya* were destroyed. The *Colon* was at a later period of the engagement run on shore also. The *Furor* and *Pluton* were destroyed at an early hour of the engagement and were sunk.

7. Question. How close did you pass to the *Infanta Maria Teresa* during the engagement?

Answer. I should think about a mile or a mile and a half.

8. Question. At what time was that?

Answer. After she was run on shore.

9. Question. Can you state approximately how long?

Answer. I should think about an hour. If it is a matter of importance I can refresh my memory by looking at the report.

10. Question. Did you make an examination of the *Teresa* after that? If so, when and under what circumstances.

Answer. I went on board the *Teresa* in the afternoon of July 5, something more than forty-eight hours after she was run ashore. I was alongside her in a boat, and spent considerable time on board her.

11. Question. What was her position then, with reference to the shore?

Answer. She was lying on the sand, bows onto the shore at a short distance from the beach, the deep water extending fairly close to the shore line. She was upright; slightly higher forward than aft, and gave the impression of resting on even ground—resting easily.

12. Question. Was she aground throughout her entire length?

Answer. I should say so.

13. Question. What was the depth of the water, approximately, where he lay?

Answer. I took no soundings and I have not the record of the soundings that were taken, but I should say, approximately, 15 feet forward and 23 or 24 feet aft, but that is merely an estimate. I can not check that by any soundings statements, which, I suppose, are available.

14. Question. What was the condition of the *Teresa* as she lay on the beach on July 5?

Answer. The *Teresa* was very badly burned out. All the woodwork and everything inflammable inside of her had gone, but the magazines had not been exploded. Her beams were badly warped and twisted. They had been so heated that where they had borne any weight they had gone down under the weight. In my opinion, the vessel was worth very little above her protective decks. That is, the lighter and cheaper construction above her protective deck was pretty well destroyed. As to her under-water body, the principal part of the ship, I do not think that had suffered any structural damage. The lines of the ship did not show it, nor was there anything in the position in which she lay to convey that impression. That is, the injury to the ship was done by fire, in my opinion.

15. Question. What injuries, if any, had been sustained by her armor and armament?

Answer. I do not think her armor had sustained any material injury. I think her armor was practically intact. Her guns and carriages had been burned, and I think were materially injured. I doubt if her lighter guns could have been of service at any time; possibly also her 26-cm. guns.

16. Question. What examination did you make of her engines and boilers?

Answer. I made none of her engines and boilers. I did not go below.

17. Question. What can you say of her condition as compared with that of the *Oquendo* and *Viscaya*?

Answer. Well, the *Oquendo* was absolutely ruined by the explosion of her magazines.

18. Question. In what way?

Answer. It had affected the integrity of her structure. The lines were out of true. They had blown out her sides; had blown up her protective decks. I made no examination of the *Viscaya*, but as her magazines exploded, I have no doubt that she was in practically the same condition.

19. Question. After your examination of the *Teresa* on July 5, did you reach a conclusion as to whether she was a salvable ship or not? If so, please state your reasons for your conclusions.

Answer. There was a general consensus of opinion that the *Teresa* probably was a salvable ship. I do not know that I can say when I personally arrived at any conclusion of that character, but steps were very

soon taken to get the *Teresa* off, and the efforts of the wreckers were devoted almost exclusively to her. They were devoted exclusively to her, with some tentatives in the direction of the *Oquendo*, and that consensus of opinion was based on the impression that the *Maria Teresa* was not structurally injured, having had no serious explosions. If she could be gotten off and repaired, she would be a valuable ship.

20. Question. What measures, if any, were adopted after the battle of July 3 to preserve the *Teresa* against further injury through winds and waves?

Answer. No special efforts, because none were necessary at that season. The only practicable method to preserve a ship in such a situation from any injury arising from storms is to get her off the beach. The measures taken to preserve her were the measures taken by the Government through the wrecking company.

21. Question. What, if anything, was done while you remained in the vicinity of Santiago, with a view to floating the *Teresa*?

Answer. The wrecking companies went to work on her. To the best of my knowledge, they proceeded to patch up the holes which had been occasioned by striking, and to pump the water out in order to free her. Then they had a serious obstacle in what they supposed to be due to the fact that a rock protruded through her bottom, over which they had to lift her. I remember we went down on one occasion to get out her chains in the forward lockers to make her lighter forward, that she might be lifted more easily. I believe eventually she was gotten out by lifting her from those rocks which had protruded through her bottom in her forward body, but I can not describe just the means which were taken to do it.

22. Question. What injuries other than those caused by fire had the vessel sustained during the engagement?

Answer. In my opinion, no injuries during the engagement. The vessel had been struck frequently by shot, but in the majority of instances above the water line, so that the injuries by shot would really be covered by the injuries from fire. She had, to the best of my recollection, one or two heavy shells through her after body below the water line, but nothing that did any very serious damage to her flotative power; of course, I mean no serious damage, provided the vessel were raised.

23. Question. What injury did she sustain through grounding?

Answer. That is a question that it is impossible to answer without having seen the vessel out and in dock, but I should say that her injuries sustained in grounding were local injuries, like bending a plate or punching a hole through a plate, but not injuries that affected the integrity of the structure as a whole.

24. Question. In your opinion, were the injuries which she sustained from projectiles of the United States fleet, from the fire occasioned by these, and from grounding of a serious character?

Answer. They were of a serious character so far as regards the expense of restoring the vessel. So far as regards the ability to restore the vessel, I think they were not.

25. Question. In your opinion was the *Teresa* after July 3 a salvable ship?

By Mr. BINNEY. That has been asked already, I think.

By Mr. HAYDEN. I thought I had not asked that very question.

Answer. I could not only say that that was my opinion, but express it as a certainty, as it is a matter of common knowledge that the ship was saved and was halfway to a northern port when she was lost.

26. Question. Are you familiar with parallel or somewhat similar instances of grounding and injury of large ocean-going vessels and their recovery?

Answer. I have no knowledge, except through common report.

27. Question. Through common report are you acquainted with similar cases? If so, please mention them to illustrate the salvability of the *Teresa*.

Mr. BINNEY. Question objected to for the reason that it calls for statements outside the knowledge of the witness, as he has himself admitted.

Answer. I remember years ago that the *Amérique* of the French line ran ashore near Long Branch, and was there a large part of the winter, through several very heavy gales, and was afterwards gotten off structurally uninjured. A steel vessel, particularly a modern man-of-war, is much more likely in grounding to suffer local strains than she is to suffer a structural warping or deformation. She is built enormously strong; a man-of-war particularly, in order to carry her heavy localized weights. She has a double bottom. She has heavy bulkheads, and there is an amount of space and weight consumed in strengthening her and making her substantially a girder that is not given to vessels of any other type. For that reason—and I think that is a better reply to your question than to cite isolated instances—such a ship may have holes punched in her bottom or have plates warped, but she is not likely, except under circumstances of exceptional strain, to suffer a structural deformation.

28. Question. Are you acquainted with the reports with regard to the wrecking operations upon the *Teresa*?

Answer. No; I am not.

27. Question. From your examination of her on July 5, 1898, or at other times, can you form an estimate of her value as she lay on the beach off Santiago?

Answer. I think the ship's armor was substantially uninjured, and of that she had about 1,000 tons, more or less. Her armor was the best Campbell compound of the date of manufacture, of about 1890, and armor of that kind cost at that time over $400 a ton—about $420. Taking into account the value of the labor expended in fixing that armor, I think $400,000 would not be an improper estimate for the value of her armor as she lay on the beach. The ship's machinery was built to develop at forced draft 13,500 horsepower. I am told by the Bureau of Steam Engineering that the value of such machinery, when new, is not less than $60 per horsepower, which would make the value $810,000. She was practically a new ship. I doubt if her machinery had suffered much deterioration from neglect—and I say that because Spanish vessels always did suffer from neglect from the time they were built—nor do I think her machinery had suffered much injury from its exposure to salt water. I put her machinery as worth $600,000. Aside from those items, the ship's hull, in my opinion, below her protective deck, was intact, with the exception of local injuries, which I have

mentioned. Above her protective deck I think she would have had to be entirely rebuilt. The cost of the ship, I have ascertained from the files of the office of Naval Intelligence, was very nearly $2,900,000. I should think $2,500,000 would have been a fair price for her as she came out of Santiago that morning, and I think that it would have cost from $1,000,000 to $1,250,000 to put her in order. I should put the value of the *Maria Teresa* at from $1,250,000 to $1,500,000. I have gone a little further. It is difficult to make an estimate of that kind, because of the absence of material for comparison, but we have something of that kind in the case of the three gunboats which were sunk at Manila and afterwards raised and taken to Hongkong and repaired. I am informed by Naval Constructor Capps that the cost of putting those gunboats in order, including raising them, was about half of their value. They also were burned out, but I do not think as badly burned as the *Maria Teresa*. On the other hand, these repairs included the actual replacement of a portion of the bottom of the ship under the boilers and machinery, which had been corroded and rusted out through neglect. That is, the repairs covered a considerable amount of work that was not in any way the consequence or result of the engagement at Manila, and which was included in the cost. Now, I think that would set off probably—that work on the bottom—would probably set off the increased work on the top sides of the *Maria Teresa*. The cost of repairs, expressed in percentage of the value of the ship, necessary under such circumstances to put an armored ship in good order, would probably be less than that required to put an unarmored ship in good order, because of the great value of the side armor and her protective deck.

By Mr. BINNEY. So much of this answer as relates to the three gunboats at Manila is objected to as being merely a hearsay statement and not competent evidence.

28. Question. (By Mr. KING.) In comparing the relative amount of repairs on the vessels at Manila and the *Maria Teresa*, would you consider the fact of the longer stay under water of the vessels at Manila a factor of importance?

By Mr. BINNEY. Question objected to on the ground that the witness has no personal knowledge of the conditions of the vessels at Manila.

Answer. No; I do not think that would make any difference, because I understand the machinery of the vessels at Manila was abundantly protected by the oil used, and I think that would be likely to obtain without much difference, unless the period under water was so great that that disappeared entirely—that is, between three weeks and two months—that would not make any difference.

29. Question. I invite your attention to the diagram and seven reproductions of photographs contained in a portion of the report of the Secretary of the Navy for the year 1898, known as the Appendix to the Report of the Chief of the Bureau of Navigation, and ask whether those clearly show the condition of the *Teresa*, and her appearance, as she lay on the beach west of Santiago.

(Witness examines book.)

Answer. Yes; I should say so. That would correspond with my impressions.

30. Question. What was the position of the *New York* on the morning

of July 3, when the Spanish vessels made their sortie from Santiago harbor?

Answer. The *New York* was about 7 miles east of the entrance to Santiago harbor, on her way to Siboney, where Admiral Sampson intended to land and go to the front to consult with General Shafter.

31. Question. What did the *New York* do when the attempted escape of the Spanish ships was discovered?

Answer. She instantly turned and steamed at full speed in the direction of the fleet and joined in the chase.

32. Question. Did you, while bound for Siboney or while turning, or thereafter during the engagement, see the U. S. S. *Harvard*?

Answer. I did not.

33. Question. Did the *New York* signal to her at any time?

Answer. I think not; that is a matter that can be settled by referring to the *New York's* signal log. I have not done that.

34. Question. I invite your attention to the report of the board appointed by Admiral Sampson for the purpose of platting the positions of the Spanish and United States vessels engaged in the battle of Santiago, the report bearing date February 8, 1898, and appearing on pages 593 to 594 of the Appendix to the Report of the Secretary of the Navy. Please examine the chart or diagram accompanying that report and state whether, in your judgment, that shows correctly the positions of the United States and Spanish vessels.

Answer. I am already familiar with this diagram and there are a great many people who dispute its accuracy in regard to many details. It probably is as fair a result as could have been obtained.

35. Question. It appears from the report of the commanding officer of the *Harvard*, which appears on pages 549 to 550, that she remained at Altares until after 10.15 on the morning of July 3, when the *Maria Teresa* turned to run in shore prior to her surrender. Please state whether or not day signals in use at the time could have been exchanged between a vessel in the position of the *Harvard* and one in the position of the *Teresa*.

Answer. The *Harvard* being at Altares, no; very decidedly, no.

36. Question. What day signals are used or were used in the United States Navy at that time?

Answer. Flag signals and what is known as the wigwag or Army and Navy code. Flag signals can be read the farthest.

37. Question. At what distance could flag signals be read under conditions such as those that prevailed on the morning of July 3, 1898, in the vicinity of Santiago?

Answer. Possibly 4 or 5 miles. The reading of flag signals depends upon the size of the flag, and upon the manner in which they blow out, the manner in which the light strikes them. Under the best circumstances and with the best glasses, 5 or 6 miles would be the greatest distance, and more frequently a less distance than that is the limit.

38. Question. Please explain what is meant in your former answers by the expression "structural injuries" and "local injuries."

Answer. I mean a structural injury to be an injury affecting the integrity of a ship as a whole, warping her structure, breaking her back, or what would be equivalent to the bending of a girder, if that will make

it any clearer; whereas a local injury is simply, as its name implies, the bending of a plate in one place, the punching of a hole through a plate, an injury which is circumscribed.

Cross-examination by Mr. BINNEY:

1. Cross-question. How long did you remain in the locality where the *Teresa* was after the battle?

Answer. About six weeks. A little less, perhaps. I think we left Guantanamo on August 12.

2. Cross-question. During that period how often did you go on board the *Teresa*?

Answer. Twice. Once on the 5th, before any work had been begun on her, and once on some subsequent day, I should say some three or four weeks later, when the wreckers were at work on her.

3. Cross-question. On the second date what examination did you make of her?

Answer. I made no particular examination of her. I went on board and saw men who were at work dragging the chains out of the forward passage. I talked with the wreckers, but I made no such examination of her as that indicated by the report of the board. (See Report of Secretary of Navy, Vol. II, pp. 573 to 592.)

4. Cross-question. How long did you remain on board her at that time?

Answer. I suppose half an hour.

5. Cross-question. And on the first occasion how long were you on board of her?

Answer. About the same length of time, or perhaps longer.

6. Cross-question. To what extent was she pumped out the second time when you were on board?

Answer. That I can not say precisely. They had been pumping out and leaks had developed again. Leaks had developed, probably caused by stirring the vessel in the attempt to draw her off, and it was from that circumstance that the conclusion was drawn that she was resting on a rock which had gone through her forward bottom. I know there was considerable water in some of her middle compartments at that time. I remember looking down.

7. Cross-question. Did you see her after she was floated?

Answer. No. I never saw her after that visit.

8. Cross question. Is it not a fact that the *Colon* was much less injured than the *Teresa*?

Answer. Much less; but she could not be saved.

9. Cross-question. To what extent did you personally investigate the practicability or cost of floating the *Colon*?

Answer. I made no personal estimate of that practicability. It was the subject of a great deal of discussion, because the ship was substantially uninjured. The problem that presented itself was how to get her off the beach. There were different opinions held with regard to her, but the Navy Department finally decided that it was not worth while to endeavor to make the attempt. It was regarded by everybody as an attempt the success of which would be very doubtful.

10. Cross-question. Can you give any statement as to how much might have been realized from the material of the *Vizcaya* and *Oquendo* if it

had been undertaken to remove as much of their material as could have been removed without unreasonable expense?

Answer. I doubt if the ship could have been floated, and as to the material, that would have been simply scrap iron. The most valuable parts would have been the machinery, but without floating the ship the possibility of getting that out would have been very remote. Their armor I should call worth very little, because it would have been necessary to have built a ship to fit it. There is a great difference between the value of armor simply as scrap iron and the value of armor in place. I do not think it would have been worth while to attempt to wreck a ship of that description where it could not be floated.

11. Cross-question. Would it not have been possible to have removed a portion of the material from those vessels which would have had some commercial value?

By Mr. HAYDEN. I object to that as immaterial.

Answer. I do not think so. Some of the guns were taken off, as you know, and distributed as trophies. They were more easily gotten out. It does not seem to have been considered worth while to do anything else.

12. Cross-question. But you would not undertake to say that, even if it had been desired to make as much money out of those wrecks as possible, nothing could have been obtained for any of the material taken from them over and above the cost of taking it?

By Mr. HAYDEN. Same objection.

Answer. I would not dispute so broad a proposition as that, but I do not think it would have amounted to anything worth taking into consideration.

13. Cross-question. The condition of the *Teresa* when you first saw her was such that if the water had been deep enough she would have sunk out of sight. Is not that a fact?

By Mr. HAYDEN. Same objection.

Answer. Oh, I think so; I have no doubt of that.

14. Cross-question. It was simply the comparative shallowness of the water that kept any portion of her above water, was it not?

By Mr. HAYDEN. Same objection.

Answer. It was the shallowness of the water that did that. It was the shallowness of the water that gave her her injuries.

15. Cross-question. Have you ever been connected with the Bureau of Construction and Repair, United States Navy?

Answer. No.

16. Cross-question. In your estimate of the value of the *Teresa* as $2,500,000 just before the battle, did you include her armament?

Answer. Yes.

17. Cross-question. In estimating the value of the *Teresa* as she lay on the beach, have you made any allowance for the cost of floating her and of getting her to a safe place for making repairs?

Answer. No; I have made no estimate of that. The amount of that is ascertainable. The Government paid certain amounts for doing that.

18. Cross-question. I understand, then, that in your estimate of the value of the ship you have made no deductions on account of any expense that would have to be incurred in order to make the vessel of any use whatever to the United States Navy?

Answer. I considered the estimate as the value of the ship when she was taken from the beach. I have stated that I thought it would probably cost from $1,000,000 to $1,250,000 to put her in condition for service. That margin of $250,000 is large enough to cover the cost of wrecking and bringing her to the United States?

19. Cross-question. In repairing the *Teresa* so as to have made her available for use as a vessel of war, it would have been necessary to remove a large quantity of injured material from her, would it not?

Answer. Yes.

20. Cross-question. The work of such removal from a vessel which it is intended to preserve has to be done carefully, does it not, so as not to destroy such portions as it is intended to preserve?

Answer. Oh, yes; it must be done with tools.

21. Cross-question. In the case of the *Teresa* such removal would have been a matter of considerable expense, would it not?

Answer. Yes; but I think more than covered by the value of the material removed, which would not have been used in rebuilding the ship; would have been sold.

22. Cross-question. The material removed would have been simply scrap material, would it not?

Answer. Yes.

22½. Cross-question. And you think that its value as scrap would have been greater than the cost of removing it?

Answer. I think so, yes, sir; the ship being in dock, where everything would have been done under the best circumstances.

23. Cross-question. Have you ever had any experience in work of that character?

Answer. No.

24. Cross-question. Do I understand that in estimating the value of this vessel as she lay on the beach your estimate is the same that it would have been if the vessel had been floated and in dock, where repairs could have been made?

Answer. No; for the cost of getting her to the dock must be taken into consideration.

By Mr. HAYDEN. And that you have done?

WITNESS. And that I have done. You mean net value, of course.

25. Cross-question. Do I understand that if the *Teresa* had been brought to a dock in a United States port you would have estimated her value as from $1,250,000 to $1,500,000 plus all that had been spent on her to get her floated and make such repairs as were necessary prior to her voyage to the United States?

Answer. I should think that if the *Teresa* had been brought to a United States port she would have been worth about $1,500,000. That is as near, as a professional man, as I could come to it, giving a lump sum.

26. Cross-question. As a professional man, what do you believe the *Teresa* would have sold for had it been desired to sell her as she lay on the beach to any parties that wished to purchase, rather than attempt to float her for the use of the United States?

By Mr. HAYDEN. I object to that as immaterial.

Answer. That I can not say. The market for men-of-war is a very

restricted one. My estimate of value is based upon her value to the United States as compared with the cost of its other ships.

27. Cross-question. Do you know whether any of the old side plating above the protective deck of the *Teresa* was fit for use?

Answer. Probably not. I have assumed that the whole upper structure of the ship would have had to be replaced.

28. Cross-question. Do you know anything about the condition of her dynamos?

Answer. No.

29. Cross-question. What condition have you assumed them to be in in your estimate?

Answer. I have not taken them into account. They are a very small percentage of the cost of a vessel.

30. Cross-question. Do you know anything about the condition of her steam steering gear?

Answer. No.

31. Cross-question. Have you taken that into account?

Answer. I have not considered it one way or the other. Probably her steam steering gear was intact, as that is below the protective deck, and I should assume that it was; but small auxiliary motors I have not taken into consideration.

32. Cross-question. You mean that you have not included them in your estimate?

Answer. I have not. I have not attempted to make a close estimate. That I consider impossible. I considered the principal features of a ship of her class.

33. Cross-question. You have stated that the armor of the *Teresa* as she lay on the beach was worth $400,000 and her machinery $600,000, leaving from $250,000 to $500,000 for the value of the balance. What portion of that $250,000 to $500,000 did you allow for the hull and what portion for the remains of her armament?

Answer. I doubt if her armament was worth much. I think her lighter guns were probably so injured by fire as to be unserviceable. I am not so sure as to her 28 cm. guns. They were somewhat protected by the barbettes. It would probably have been found that it would have been better to have put new guns—our own guns—in her. I do not think we should have kept the Spanish guns. If we had not used them they would have been of no particular service, except as trophies.

34. Cross-question. Is or is not any particular portion of the armament of the *Teresa* included in your estimate?

Answer. I have not included it in my estimate; and I had, in estimating the value of her machinery, under consideration the co[illegible]cleaning and overhauling it. Her machinery was probably worth when new $800,000, and I put it at $600,000.

35. Cross-question. How long have you been in the United States Navy?

Answer. Thirty-three years, from the time I entered the Naval Academy.

36. Cross-question. And from graduation?

Answer. Twenty-nine.

37. Cross-question. You have stated that you have had no experience

in the work of removing material from vessels of this character. Have you had any experience in regard to their construction?

Answer. No direct experience. That is, I am not a naval constructor, and have not been on duty under the Bureau of Construction, but I have had a good deal to do with modern vessels. I served for three years as recorder of the board of inspection and survey, whose duty it was to examine and report on the construction of ships at that time. I was on that board when the *Indiana*, *Massachusetts*, *Brooklyn*, and *Iowa* were all examined and reported on upon their trial trips. I served as an officer on the *Iowa* before going to the *New York*, so that I know from my own observation and experience— responsible experience—and by my reading, a good deal of the construction of modern ships.

38. Cross-question. To what extent did that work familiarize you with the cost of construction of different parts of vessels?

Answer. To the extent that the contracts were constantly referred to to see that they were carried out. The contracts usually carried the cost of the vessel in a lump sum. The cost of the different portions was more or less a matter of discretion.

39. Cross-question. If you had had an opportunity to inspect the *Teresa* thoroughly after she had been floated and brought to Guantanamo, would you have considered that your judgment of her value would have been more reliable than a judgment obtained with such opportunities for inspection as you actually have had?

Answer. Oh, certainly; the more careful inspection one can make the better opinion he can give. There is no doubt about that.

Cross-examination by Mr. WILLIAM W. HARVEY, counsel for the officers and enlisted men of the U. S. S. *Harvard*.

1. Cross-question. Did I understand you to say that you did not see the *Harvard* at any time on July 3?

Answer. I did not see the *Harvard* at any time on July 3—that is, I have no present recollection of ever having seen her. As I came up to Siboney to send a dispatch at 3 a. m., July 4, 1898, I spoke the *Harvard* off Siboney to know how many Spanish prisoners she had. I did not see her during the engagement, but I do not mean any more than I say. She might have been in sight, because my attention was directed to the ships engaged and I did not look behind. I do not know where she was of my own knowledge.

2. Cross-question. At 9.35, the time when the *Teresa* came out of the harbor of Santiago, in which direction was the *New York* headed?

Answer. The *New York* was headed to the eastward.

3. Cross-question. How long did she continue on that course?

Answer. She turned instantly.

3½. Cross-question. What first brought the attention of her commanding officer——

Answer. The firing.

4. Cross-question. Was it possible to see signals on the vessels on blockade from the *New York*?

Answer. The nearest ones.

5. Cross-question. What vessel was that?

Answer. The nearest vessel was the *Indiana*, probably about 4 miles from the *New York*.

6. Cross-question. What is the extreme limit of ability to read signals under good conditions?

Answer. I should say about 6 miles signals are usually read.

7. Cross-question. What was the first signal that the *New York* read?

Answer. Well, I do not know. The *New York* read no signals. The *New York* was the flagship. There were one or two signals made—that is, reports of vessels.

8. Cross-question. Did any vessel signal to the *New York* any information?

Answer. No, it was not necessary; the *New York* instantly turned.

9. Cross-question. It is not a question as to whether she acted on the information, but whether signals were made.

Answer. Two or three ships hoisted signals—that is, the preconcerted signal, "The enemy is coming out." As soon as the *New York* heard the firing that was known on board the *New York*. I do not know whether those signals were read or not.

10. Cross-question. What was your position on the *New York*?

Answer. I was assistant chief of staff.

11. Cross-question. Could you see the Spanish vessels as they emerged from the harbor?

Answer. Yes.

12. Cross-question. Could you see whether the *Harvard* was alongside of the wharf or offshore at Altares?

Answer. No; I could not see anything about there. I do not know where the *Harvard* was. I do not know what she was doing at that moment.

13. Cross-question. When the *Teresa* turned to run ashore at 10.15, how far was the *New York* from her?

Answer. About 6 or 7 miles, I think.

14. Cross-question. And how far from Altares were you then?

Answer. We were about opposite the entrance to Santiago. I forget just the distance that the *Maria Teresa* ran ashore west of Santiago, but I think about 6 miles.

15. Cross-question. Then you think that the *New York* was directly off the harbor?

Answer. The *New York* was, as nearly as I recollect, directly off the enerance to Santiago at the time the *Teresa* turned in.

16. Cross-question. Would there have been any difficulty in reading a flag signal at the distance of 2 miles on July 3, 1898?

Answer. Not unless from the special circumstances of the case the ship making it, or the ship reading it, were shrouded in smoke. It is impossible to say what may or may not happen in an engagement.

17. Cross-question. Was the *New York* shrouded in smoke at that time?

Answer. No.

18. Cross-question. When the Spanish vessels came out, were you on deck?

Answer. Yes.

The examination by counsel being concluded, the witness is asked whether he knows anything further material to the subject of this his

examination which may be a benefit or advantage to any of the parties hereto, and if he does, to state it, says:

Answer. No.

S. A. STAUNTON.

Sworn to and subscribed before me this 27th day of August, 1900.

LOUIS BEYER, Jr.,
Notary Public.

Deposition of Gardiner C. Sims (for the United States).

GARDINER C. SIMS, having been produced as a witness, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and thereupon deposes and testifies as follows:

By Mr. BINNEY:

1. Question. What is your name?

Answer. Gardiner C. Sims.

2. Question. What is your age?

Answer. Fifty-five years.

3. Question. What is your present occupation?

Answer. Superintending engineer of the army transport service.

4. Question. What are your duties at present?

Answer. I prepare the plans and specifications for the refitting of the army transports, having charge of them during their refitting as well as the engineering department repairs; recommending for appointments all officers and men connected with the engineering department.

5. Question. How long have you been in the army transport service on such duty?

Answer. Since February 10, 1899.

6. Question. Have you at any time served in the United States Navy?

Answer. I have, as chief engineer, with the rank of lieutenant-commander, on the U. S. S. *Vulcan* during the Spanish-American war.

7. Question. Before that time had you any connection with the Navy?

Answer. I was engaged during the years 1867, 1868, 1869 as mechanical draftsman at the New York Navy-Yard.

8. Question. Were you in any way concerned in the action at Santiago on the 3d of July, 1898?

Answer. No, sir.

9. Question. Where were you?

Answer. At Guantanamo Bay.

10. Question. Have you any interest in the result of the present suit?

Answer. None whatever.

11. Question. What study have you made and what practical experience have you had in regard to the construction and repair of machinery?

Answer. I am a machinist by trade, having served the full regular apprenticeship of four years at the Central Locomotive Works, West Albany, N. Y., commencing January 25, 1863, and after my experience at the New York yard I returned to West Albany, becoming chief draftsman of the locomotive department. I then engaged with the J. C. Hoadley Company, of Lawrence, Mass., as their superintendent; later engag-

ing in business for myself, and have built about 3,500 steam engines. Our company was the Armington & Sims Engine Company, Providence, R. I.

12. Question. What experience have you had in regard to the construction and repair of steamships, whether vessels of war or others, and what opportunities of observation have you had in regard to them?

Answer. I have never had any experience in the construction of war vessels, but have kept fairly well informed from a mechanical standpoint, and during my term of service in this department have had the general mechanical supervision of about fifteen transports.

13. Question. Have you at any time been consulted as to the value of vessels injured by fire, and their capability for repair?

Answer. I inspected all of Admiral Cervera's fleet after its destruction. In my official position here have inspected several ships, reporting to the Quartermaster-General, United States Army. I refer to the North German Lloyd burned ship *Main* and the *Saale*. I have inspected those twice, as they have been offered to the Government.

14. Question. How long did you serve on the *Vulcan?*

Answer. Between eight and nine months; from before it went into commission until its flag was hauled down at the League Island Navy-Yard.

14½. Question. Were you at any time assigned to duty in regard to the *Infanta Maria Teresa?*

Answer. No, sir. I was requested to inspect it on two occasions—I think three, but I am not positive except as to two—and also the other wrecked ships.

15. Question. What sort of a vessel was the *Vulcan?*

Answer. She was a naval repair ship; the first of its kind.

16. Question. Was the *Vulcan* concerned in repairing the *Infanta Maria Teresa?*

Answer. It was, its entire mechanical force being engaged.

17. Question. Where was this, and about how long were such repairs carried on?

Answer. Part of the time refitting while the ship was ashore, and the remainder of the time while it was at anchor in Guantanamo Bay; the repairs were carried on for about six weeks.

18. Question. Did you inspect the *Teresa* before she was floated?

Answer. Three or four times; previously I have said twice; I think I can recall five or six visits. We were down there with the *Vulcan* on two occasions—so I was there a number of times.

19. Question. While the *Teresa* was at Guantanamo were you regularly concerned in her repair?

Answer. Yes, sir; daily.

20. Question. To what extent did you become familiar with the condition of the *Infanta Maria Teresa?*

Answer. I had a general knowledge of its requirements, to get it ready for sea for its trip north.

21. Question. With what portions of the vessels were you particularly familiar?

Answer. The engineering department, as well as the repairs to the hull, such as closing up the air ports, loose rivets, shot holes, etc.

22. Question. Have you been over the whole vessel?

Answer. Yes, sir. One moment. No; I couldn't get way astern, because there were parts of bodies in there, and in fact they were in there when we brought it north. I have been all over the engineering department, and all that could be seen. I was in the magazines. There was no need of going way below; I was in the bilges.

23. Question. Did you see any evidence of injury to the machinery resulting from the action of the water during the time that the vessel lay in the water off the coast of Cuba?

Answer. Yes, sir; the usual rusting of metals, of iron and steel parts.

24. Question. Was or was not this injury, received during the time that the machinery was under water, of such character as to call for extensive repairs and overhaulings?

Answer. It would to piston rods, valve rods, and such movable parts of the main engines and auxiliaries, but would not seriously affect the main parts other than to depreciate their intrinsic value.

25. Question. What was the general condition of the *Teresa* above the protective deck?

Answer. I considered it worthless other than for scrap iron.

26. Question. Was complete reconstruction above the protective deck necessary?

Answer. Entirely so.

27. Question. Would this reconstruction have to be preceded by the demolition of the injured parts?

Answer. Yes, sir; it would have been necessary to remove it all, at considerable expense.

28. Question. Would that have been at greater or less expense than the value of the scrap material removed?

Answer. The expense would have been more than the value of the scrap material.

29. Question. Much greater?

Answer. Yes, sir.

30. Question. Were you requested by the board of inspection and survey of the United States Navy to furnish an estimate of the value of the *Infanta Maria Teresa* at the time she was taken possession of by the United States?

(Objected to as immaterial and incompetent.)

Answer. I received a letter from Rear-Admiral Frederick Rodgers concerning the appraisal of the *Infanta Maria Teresa*.

31. Question. I hand you a paper which purports to be a copy of a letter from you to Admiral Rodgers, dated August 2, 1899, and ask if you believe that to be a correct copy of the reply which you made to his letter concerning the appraisal?

(Objected to as incompetent and immaterial, and upon the further ground that the letter of Admiral Rodgers mentioned has not been put in evidence.

(Counsel for the United States offers in evidence the said copy, and it is marked "U. S. Exhibit A.")

Answer. I recall the substance of the letter and believe it to be a true copy of my letter to Admiral Rodgers.

32. Question. In this letter you state your opinion that "exclusive of armament, etc., the ship at its lowest possible valuation was worth to the

Government not less than $500,000." In naming that figure did you take into account whatever might be the legitimate cost of raising the vessel, making such temporary repairs as were necessary, and bringing her to an American port?

(Objected to as incompetent and immaterial.)

Answer. My estimate was based upon the delivery of the ship at the Norfolk Navy-Yard, as contracted for.

33. Question. Do you mean that she would have been worth to the Government $500,000 before the payment of the legitimate cost of raising her, making such temporary immediate repairs as might be necessary to enable her to make the voyage, and bringing her to the Norfolk Navy-Yard, or after such cost had been paid?

(Objected to as leading.)

Answer. After such cost had been paid.

34. Question. By the words "exclusive of armament, etc.," precisely what did you mean?

(The question is objected to as incompetent and immaterial, relating to a letter not properly considered as evidence in this case.)

Answer. I refer to armament, turrets, ammunition, and plating.

35. Question. By plating do you mean the armor plating?

Answer. The armor plating; yes.

36. Question. At the present time is your estimate of the value of the *Teresa* at the time she was taken possession of by the United States, less the cost of raising, making temporary repairs, and bringing her to port, the same that you have stated in this letter?

(Objected to as incompetent and immaterial, relating to a letter not properly considered as evidence in this case.)

Answer. It is.

37. Question. In your opinion, does the sum of $500,000, less the legitimate cost of raising the vessel, making such immediate repairs as might be necessary, and bringing her to port, represent the value of the *Infanta Maria Teresa* as she lay on the beach, off the coast of Cuba?

(Objected to as leading; also as indefinite.)

Answer. The sum given is my estimate of the value of the ship delivered at the Norfolk Navy-Yard. Wrecking is an unknown quantity, and its cost would depend upon those therein engaged.

Cross-examination by Mr. HAYDEN, counsel for the libellant:

1. Cross-question. Have you ever been engaged in shipbuilding?

Answer. No, sir.

2. Cross-question. Was the business of the Armington & Sims Engine Company confined solely to marine engines, or did you construct engines of all sorts?

Answer. Principally stationary engines.

3. Cross-question. You mentioned having had to do with the building of 3,500 engines. What proportion of those, in your judgment, were marine and what proportion stationary or land locomotive engines?

Answer. About all were stationary engines.

4. Cross-question. When did you first see the Spanish cruiser *Infanta Maria Teresa?*

Answer. About the last week in July of 1898.

5. Cross-question. You had never seen her prior to the outbreak of the war?

Answer. No, sir; only at anchor here in the North River. I had never been on board.

6. Cross-question. Are you familiar with the cost of war vessels?

Answer. No, sir; my information concerning such matters is obtained from official information as published in the daily papers and from the official reports—those I have from the Secretary of the Navy—copies of official reports.

7. Cross-question. Have you ever had to do with the construction of a war vessel?

Answer. No, sir.

8. Cross-question. Did you ever make a critical examination of a war vessel for purposes of appraising her value?

Answer. No, sir.

9. Cross-question. Did you ever prepare plans and specifications for a war vessel of any class?

Answer. No, sir.

10. Cross-question. Are you sufficiently familiar with shipbuilding to know whether the relative cost of a war vessel is greater or less than a merchantman of substantially the same tonnage?

Answer. Yes, sir.

11. Cross-question. The cost of a war vessel is greater?

Answer. Much greater.

12. Cross-question. Why is that?

Answer. It is specially designed for a special purpose, being made very heavy and strong, with the greatest amount of power in the least possible space.

13. Cross-question. That is especially true, is it not, of heavily armored cruisers or second-class battle ships, such as the *Infanta Maria Teresa* was, and vessels of like character?

Answer. Yes, sir; and so constructed that it will carry immense weights with safety above its water line.

14. Cross-question. The strong and heavy construction of a war vessel renders her less liable to serious injury if she is grounded, does it not?

Answer. Yes, sir.

15. Cross-question. How soon after the engagement at Santiago did you make a critical examination of the *Teresa?*

Answer. The third week in July; possibly twenty days after.

16. Cross-question. Was the result of your inspection embodied in a report made during July or August of 1898?

Answer. No; not a written report.

17. Cross-question. You didn't make a written report of her condition?

Answer. No, sir.

18. Cross-question. Did you ever make a written report upon her condition?

Answer. No, sir.

19. Cross-question. To whom did you report—to what official of the Navy Department or of the North Atlantic fleet?

Answer. My verbal reports were made to Chief Engineer James H. Chasmar and Capt. Ira Harris, of the *Vulcan.*

20. Cross-question. Where was Chief Engineer Chasmar stationed at that time?

Answer. On board the *Vulcan*.

21. Cross-question. Who was your immediate official superior during July and August of 1898?

Answer. Capt. Ira Harris.

22. Cross-question. Did you make written reports to him?

Answer. No, sir.

23. Cross-question. Were you appointed by him to inspect the *Teresa* individually, or as a member of a board?

Answer. No, sir.

24. Cross-question. Then a complete inspection of the *Teresa* was never assigned to you as an official duty?

Answer. No, sir.

25. Cross-question. Such inspection of her as you made was casual, or for your own personal information?

Answer. For my own personal information; that is right.

26. Cross-question. What was the condition of the *Teresa* when you first went on board of her? In answering that, please state where she was lying with reference to the shore, and, in general, describe the surroundings.

Answer. She was lying about 7 miles west of the entrance to Santiago Harbor, on a sandy beach, all the upper works having been destroyed by fire, together with shot and shell.

27. Cross-question. Did she not, from a casual view, present much the appearance of a vessel intact and lying at anchor off the shore?

Answer. From a distance she appeared to be on an even keel and afloat.

28. Cross-question. What was the nature of the injuries sustained by the upper works of the *Teresa*, or the portion of her above her protective deck?

Answer. It was warped, distorted, and valueless for reconstruction.

29. Cross-question. She was equipped with two turrets, was she not?

Answer. Yes, sir.

30. Cross-question. What was their condition?

Answer. Appeared to be good.

31. Cross-question. Then you do not include them in what you have to say with regard to her upper works?

Answer. No, sir.

32. Cross-question. In that you merely include her beams and plating above the protective deck?

Answer. Yes, sir; and superstructure.

33. Cross-question. How long after your first examination of the ship did you inspect her under-water body, the portion below the protective deck?

Answer. The next time I inspected the ship was a week after, and everything was flooded, the tide rising and falling on the tops of the cylinders.

34. Cross-question. Where were the tops of the cylinders with reference to the protective deck?

Answer. Nearly amidships and about 7 feet below.

35. Cross-question. When did you examine her under-water body, the portion below her protective deck, the hull?

Answer. After the ship reached Guantanamo Bay. I went all around it in a boat, but didn't get below while she was on the beach.

36. Cross-question. What was the condition of her protective deck?

Answer. As far as I could judge, it was uninjured.

37. Cross-question. What was the condition of the vessel's hull proper?

Answer. Below the protective deck; good.

38. Cross-question. There was no bulging of her lines, or anything of that kind?

Answer. None that I saw.

39. Cross-question. No structural injury?

Answer. No, sir.

40. Cross-question. Can you state generally the relative cost of the portion of a battle ship of the second-class, or an armored cruiser like the *Teresa*, the portion above the protective deck and that below it?

Answer. No, sir; I can not.

41. Cross-question. The portion below the protective deck is far more expensive, is it not?

Answer. Yes, sir; the boilers, engines, shafts, etc.

42. Cross-question. What was the condition of the *Teresa's* armor belt?

Answer. I believe it to have been good.

43. Cross-question. What kind of armor did she carry?

Answer. I do not know.

44. Cross-question. Do you know whether it was of the Harvey process or of the Krupp process?

Answer. No; I do not know.

45. Cross-question. Are you familiar with the cost of armor plating, otherwise than from newspaper discussions?

Answer. No, sir.

46. Cross-question. Did you form an estimate of the value of the *Teresa's* armor from looking at it?

Answer. No, sir; I did not.

47. Cross-question. Did you take that into consideration when you wrote the letter put in evidence as U. S. Exhibit A?

Answer. Not to attach any extra value to it.

48. Cross-question. What injuries had been sustained by the hull or under-water body of the *Teresa?*

Answer. I am of the opinion there were none outside of the injured plates on the starboard bow.

49. Cross-question. She had, had she not, in running aground stove a small hole forward, through her outer skin?

Answer. Yes, sir; and it was described as being about 7 feet square.

50. Cross-question. Careful examination was made, was it not, of the injuries sustained by the hull of the *Teresa?*

Answer. Yes.

51. Cross-question. Do you know whether reports upon those injuries were made, and whether they have been preserved?

Answer. My impression is that they were prepared and presented by Captain Harris.

52. Cross-question. The rock which had penetrated her outer skin had not also penetrated her double bottom?

Answer. No, sir; the rock was drilled and blasted away.

53. Cross-question. In what way did the *Teresa* take in so much water as she lay on the beach off Santiago?

Answer. I have no personal knowledge of that.

54. Cross-question. Were you not, then, examining her practically every day, or working on her practically every day?

Answer. No, sir; not at all.

55. Cross-question. On what duty were you then employed?

Answer. Repairing other battle ships and cruisers and vessels at Guantanamo.

56. Cross-question. Do you mean United States vessels?

Answer. Yes, sir.

57. Cross-question. When did your active work in connection with the *Teresa* commence; before or after she reached Guantanamo?

Answer. While it was on the beach. We sent a party of workingmen to overhaul the steering engines and steering gear, so that when the ship floated it could be steered by its own gear.

58. Cross-question. She likewise used her own steam to some extent, did she not?

Answer. Yes, sir; on the trip north.

59. Cross-question. With regard to her engines, your attention was particularly devoted to them?

Answer. Yes, sir; repairing the engines.

60. Cross-question. What was the condition of her boilers as she lay on the beach west of Santiago?

Answer. An examination proved that they were very good.

61. Cross-question. To what extent had her engines rusted?

Answer. The general efficiency of the engines had not been impaired, other than the rust of movable parts before described, which could have been replaced, if necessary, at a very small proportion of the original cost.

62. Cross-question. What portion of the engines of the ship were submerged and what portions were above the water in the hold of the *Teresa?*

Answer. At times they were entirely submerged; that was due to about 18 inches of tide, and often a heavy wind and sea would drive the water on that shore, increasing its depth.

63. Cross-question. At times were they entirely submerged, and at times how far did they protrude above the water in the hold?

Answer. I never saw them more than 12 inches; I never saw the tops of the cylinders more than 12 inches out of the water after the ship was flooded.

64. Cross-question. Is it or not true that iron and steel, while submerged continuously, do not oxidize or rust?

Answer. I think not; I think they depreciate very rapidly.

65. Cross-question. While submerged?

Answer. Yes.

66. Cross-question. Continuously?

Answer. Yes.

67. Cross-question. In your experience with steamships, are you familiar with any instances of the recovery of vessels which have been stranded and afterwards recovered, their machinery and boilers having been submerged for a considerable period of time?

Answer. No, sir.

68. Cross-question. Have you ever been called upon to refit or repair an engine which had been submerged for a length of time?

Answer. No, sir.

69. Cross-question. Doesn't oxidization or rusting take place much more rapidly, in fact altogether, where iron or steel is intermittently submerged and exposed to the air?

Answer. Yes, sir; much more rapidly.

70. Cross-question. Are you familiar with the official reports with regard to the recovery of the Spanish war vessels captured by Admiral Dewey in Manila Bay?

Answer. No, sir; I am not.

71. Cross-question. The steering gear of the *Teresa* was not injured, was it, during the engagement at Santiago or during the time that she remained on the beach?

Answer. Only to a slight degree, and after being submerged, as well as the seas breaking over it, it required a thorough overhauling, and worked satisfactorily.

72. Cross-question. Can you estimate what would be the cost of building a vessel like the *Teresa* in this country?

Answer. I could from drawings and specifications.

73. Cross-question. Have you ever made such an estimate?

Answer. No, sir. I could make an estimate, but not as well as men who make a business of it. I am not an expert, and I do not want to appear as such.

74. Cross-question. Do you know what was the original cost of the *Teresa?*

Answer. I do not know.

75. Cross-question. What, in your judgment, would have been the cost of restoring her to the condition in which she was on the morning of July 3, had she completed her voyage to Norfolk?

Answer. From the cost of the ship, as given in different reports, I estimated the value of refitting the ship to be about $1,500,000; a million and a half.

76. Cross-question. What proportion of the million and a half dollars, which you estimate as necessary to restore her to her condition prior to the battle, would have been expended upon her superstructure, the portion above the protective deck?

Answer. I should think about two-thirds; about a million dollars.

77. Cross-question. How much of the $1,500,000 would have been consumed in cleaning and repairing her engines and boilers and in machinery?

Answer. I should think about $300,000.

78. Cross-question. What would the remaining $200,000 be expended for?

Answer. For the general refitting, cleaning, and renewing.

79. Cross-question. Wouldn't such repairs more than restore the ship

to the condition in which she was on the morning of July 3? Wouldn't they make her practically a new vessel?

Answer. Yes, sir.

80. Cross-question. And of greater value than she was on the morning of July 3?

Answer. No; not of greater value.

81. Cross-question. Why?

Answer. It would restore her, but there would be the loss by usual wear and tear and depreciation of an old ship.

82. Cross-question. Do you know when the *Teresa* was built?

Answer. I have the date, but I do not recall it.

83. Cross-question. She was not, strictly speaking, an old ship, was she?

Answer. No, sir; not as far as years are concerned.

84. Cross-question. Apparently what was her condition prior to the battle, so far as you could judge it by her condition afterwards?

Answer. On deck and everything that was visible was apparently in very good order and condition, but I am under the impression that all the Spanish ships are generally filthy and dirty and in need of repairs below decks.

85. Cross-question. You don't know that that was the case with the *Teresa* in 1898?

Answer. Personally, no; but from my conversation with others and from what some of the prisoners stated, they were very dirty and filthy and hadn't been repaired for months.

86. Cross-question. That is hearsay?

Answer. That is hearsay; that I can't swear to.

87. Cross-question. What, in your opinion, would have been the cost of removing the damaged portions of the superstructure of the *Teresa*, the portions above the protective deck, warped by the fire?

Answer. From $75,000 to $100,000.

88. Cross-question. For how much could those portions be sold as scrap iron? How much per ton?

Answer. From one-fourth to three-fourths of a cent per pound.

89. Cross-question. Can you estimate the weight and material in the superstructure?

Answer. No, sir.

90. Cross-question. There had been no internal explosions on board of the *Teresa* of any consequence?

Answer. No evidence other than from shells from our fleet.

91. Cross-question. Have you read the report upon the condition of the Spanish vessels made by a board of naval officers which was appointed by Admiral Sampson shortly after the battle? That report appears in the report of the Secretary of the Navy for 1898, the part known as the appendix to the report.

Answer. Yes, sir; I have read it.

92. Cross-question. Is the description therein contained of the condition of the *Teresa* substantially correct?

Answer. I do not thoroughly recall the report in detail.

93. Cross-question. What was the nature of the work done on the *Teresa* as she lay on the beach west of Santiago?

Answer. Principally the closing up of the hole made in the ship's bottom by way of temporary repairs. The ship was then pumped out by the wreckers, floated, and towed to Guantanamo Bay.

94. Cross-question. How were the holes in her outer skin repaired?

Answer. My information comes principally from Captain Harris.

95. Cross-question. So you don't know of your own personal knowledge how it was done?

Answer. No, sir.

96. Cross-question. When did the vessel first use her own steam?

Answer. About the third week in October.

97. Cross-question. Shortly prior to her sailing for Norfolk?

Answer. Yes; we sailed about the 1st of November.

98. Cross-question. About a week prior to that she had used her own steam?

Answer. Yes, sir.

99. Cross-question. When she left Guantanamo she was in seaworthy condition, was she not?

Answer. No, sir.

100. Cross-question. Why not?

Answer. Having been on fire, with her plates warped, they had stretched somewhat, rivet holes leaked, and on her bows the chocks were backed by pieces of wood, which had burned out; and later, when we were overtaken by the storm and the ship plunged forward, the water was taken in at these places and the ship was abandoned with about 16 feet of water in her hold.

101. Cross-question. How many feet of water could she have held in her hold and still remained afloat?

Answer. I do not know.

102. Cross-question. Can you approximate?

Answer. No, sir.

103. Cross-question. It is true, is it not, that after her abandonment she floated to Cat Island, where she went ashore?

Answer. Yes, sir; possibly forty-eight hours.

104. Cross-question. Approximately speaking, what distance did she float in that period?

Answer. About 40 miles.

105. Cross-question. How heavy was the storm when she was abandoned?

Answer. It was very severe.

106. Cross-question. Were you then on board the *Vulcan* or on the *Teresa*?

Answer. On board the *Vulcan*.

107. Cross-question. So you only know of the taking in of water and the amount of water in her hold through hearsay; what was told you by those who were on board?

Answer. Yes, sir.

108. Cross-question. You don't know of your own knowledge?

Answer. No, sir.

109. Cross-question. Don't you think it would have been far more prudent to have brought the *Teresa* North by the Bahama Channel, taking advantage of ports and shelter going North?

(Objected to as not within the scope of the examination in chief.)

Answer. I would rather not answer that question.

110. Cross-question. In your opinion, could not the vessel have been brought North if she had taken the Bahama Channel and a more sheltered course than that adopted?

(Ojected to as not within the scope of the examination in chief.)

Answer. I would rather not answer the question.

111. Cross-question. From the time of your first thorough inspection of the *Teresa* you regarded her as a salvable ship?

Answer. I did, sir.

Redirect-examination by Mr. BINNEY, counsel for the United States:

1. Redirect-question. You stated on cross-examination that your inspection of the *Teresa* was somewhat casual and for your own personal information. Was not your inspection of the machinery a matter of your official duty?

Answer. I can't recall at this moment having been ordered there, and yet we went two or three times—parties of us.

2. Redirect-question. I am not referring to inspection while the vessel lay on the beach, but inspection after she was at Guantanamo.

Anwer. I would rather not answer that question.

3. Redirect-question. After the *Teresa* was at Guantanamo, what duties had you in regard to her machinery?

Answer. To make and put in repair everything that was necessary to assist in taking the ship to the Norfolk Navy-Yard, and the Pay Department furnished material and labor to the amount of about $15,000.

4. Redirect-question. In the performance of that duty did you become familiar with the condition of her machinery?

Answer. No, sir.

5. Redirect-question. To what extent did you become acquainted with its condition?

Answer. I was ordered on board the ship on two occasions to make an examination of certain parts of it, and confined my observations to the broken parts only.

6. Redirect-question. State what parts, please.

Answer. The reversing engine and the jacking engine, which had been broken down by some inefficient workmen.

7. Redirect-question. Did you or did you not see all the machinery of the *Teresa?*

Answer. No, sir.

8. Redirect-question. How much of the machinery of the *Teresa* did you see at any time?

Answer. When she was on the beach I went below and went all through it as far as possible with hand lamps, at the same time receiving reports from the workmen concerning its condition.

9. Redirect-question. Were you then reasonably familiar with the condition of the machinery of the *Teresa* before she went to Guantanamo?

Answer. Yes, sir.

10. Redirect-question. In connection with the floating of the *Teresa* and the preparation for her voyage, was the protective deck cut through?

Answer. No, sir; not that I am aware of.

11. Redirect-question. For the purpose of inclosing and covering the holes in the outer bottom, was the inner bottom cut through?

Answer. No, sir.

12. Redirect-question. You have spoken of the especially strong and heavy construction of vessels of war; what effect has such construction on the cost of demolition of portions injured by fire?

Answer. It would add very much to the expense.

By the examiner:

Question. Do you know anything, or can you state anything further relative to this cause or of interest to any party thereto? If so, please state it.

Answer. I do not.

GARDINER C. SIMS.

U. S. EXHIBIT A.

WAR DEPARTMENT,
ARMY TRANSPORT SERVICE,
ARMY BUILDING, WHITEHALL STREET,
New York City, August 2nd, 1899.

SIR: Your letter concerning appraisal of *Infanta Maria Teresa* received, and it will not be necessary at this time to review or quote from reports, with which you are familiar.

My visits to the *Teresa* commenced shortly after its wreck, and my attention was given to the engineer department as well as hull, but not to armament, turrets, ammunition, etc.

I am of the opinion, based on my mechanical and engineering experience, that exclusive of armament, etc., the ship, at its lowest possible valuation, was worth to the Government not less than $500,000.

Very respectfully,

GARDINER C. SIMS,
Chief Engineer, late U. S. N., U. S. S. Vulcan.

Rear-Admiral FREDK. RODGERS, *U. S. N.*,
Prest. Board of Inspection and Survey, Washington, D. C.

Deposition of Capt. Colby M. Chester, U. S. N. (for the United States).

COLBY M. CHESTER, having been produced as a witness, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and thereupon deposed and testified as follows:

By Mr. BINNEY:

1. Question. Please state your name, age, and occupation.

Answer. Colby M. Chester; 56 years of age; captain in the Navy of the United States.

2. Question. How long have you been an officer of the United States Navy?

Answer. Forty years.

3. Question. Are you a graduate of the United States Naval Academy?

Answer. Yes, subject to a restriction. I was detached during the war of the rebellion and sent into active service before final graduation, and fulfilled later the conditions for graduation.

4. Question. How long have you been in your present grade?

Answer. Since 1896.

5. Question. What is your present detail?

Answer. I am in command of the United States battle ship *Kentucky*.

6. Question. Were you in any way concerned in the naval action at Santiago on July 3, 1898?

Answer. I was not.

7. Question. What duty were you performing at that time?

Answer. I was in command of the United States ship *Cincinnati*, which, on the date of the battle, was undergoing repairs at Norfolk, Va.

8. Question. Have you any personal interest in the result of the present suit?

Answer. None at all.

9. Question. How many years' service have you seen on board of armored or protected vessels of modern types?

Answer. About three years.

10. Question. On what vessels?

Answer. First, in command of the United States ship *Bancroft;* second, in command of the United States ship *Newark*; third, in command of the United States ship *Minneapolis;* fourth, in command of the South Atlantic fleet, consisting of the *Cincinnati, Wilmington*, and *Castine;* fifth, in command of the United States ship *Cincinnati* when the war with Spain broke out; sixth, as general inspector, and finally, in command of the United States ship *Kentucky;* including my general inspectorship it would be over four years connection with these vessels.

11. Question. In addition to your periods of service in command of vessels what experience have you had in the construction and repair of steamships, especially vessels of war, or what opportunities have you had for becoming familiar with their construction or repair?

Answer. First, I was instructor in naval architecture in the United States Naval Academy in Annapolis for three years; I then was in command of a small vessel attached to the United States Coast Survey, and during a portion of the commission had charge of her reconstruction. Later I was in charge of all vessels of the Coast Survey, which, while they were not men-of-war, were officered and governed in accordance with the rules pertaining to the navy. Later, in February, 1899, I became the general inspector of the United States battle ship *Kentucky*, and was associated with her in that capacity until she went into commission in May, 1900.

12. Question. What was the nature of the instruction which you gave in naval architecture?

Answer. It was given in the shape of lectures and text-book instruction in the theoretical knowledge of constructing vessels and in practical work of a simple nature; not really practical construction; I mean by that that I was engaged in teaching, taking of measurements, taking displacements, the study of stability, etc.

13. Question. Have you made any original investigation or study in connection with your work?

Answer. Yes; I solved the problem practically of getting the center of gravity and making a curve of stability for the United States Coast Survey steamer *Bache*. This was published in the proceedings of the Naval Institute. That, I believe, was the first publication of this kind made in this country.

14. Question. What have you had to do with the designing of vessels actually constructed?

Answer. I had charge of the designing of the United States Coast Survey steamer *Patterson*, which was built under my supervision in 1883–84, as I remember it. She, however, was a wooden vessel.

15. Question. Were you at any time assigned to duty in connection with the Spanish cruiser *Infanta Maria Teresa*?

Answer. I was. In October, 1898, I was ordered with the ship I commanded, the *Cincinnati*, to Guantanamo Bay, and there took charge of the wrecking of Spanish vessels, of which the *Maria Teresa* was one.

16. Question. How long did this duty last in connection with the *Teresa*?

Answer. From the 11th of October to the 26th of October, as I remember it.

17. Question. Do you mean until the *Teresa* started for the United States?

Answer. Until the *Maria Teresa* started for the United States.

18. Question. How frequently did you inspect the *Teresa* during that period?

Answer. I am quite sure it was at least once a day.

19. Question. Before this time what knowledge had you in regard to the condition of the *Teresa*, and how had such knowledge been acquired?

Answer. I had received the records which had been transmitted from Admiral Watson through my predecessor, Capt. C. F. Goodrich, and talked with the latter officer very considerably about it, and also studied the character of the repairs going on under the immediate supervision of Lieutenant-Commander Harris.

20. Question. In the pursuance of your duties to what extent did you become familiar with the condition of the various parts of the *Teresa*?

Answer. I tried to make myself familiar with all parts of the vessel.

21. Question. What was the general condition of her hull?

Answer. The hull, when I took charge of the wreck, was undergoing repairs, particularly with reference to patching a hole in her bottom and getting the machinery in order for her transfer to the United States. The lower part of the hull was in fairly good condition; the interior work, other than that of iron, was entirely gone; the upper works above the armor was bent and distorted beyond repair.

22. Question. What was the general condition of the armor and the turrets?

Answer. The armor was in fairly good condition; the turrets were practically destroyed; their bed plates were all gone; the deck on which they rested had sunken to a very considerable extent, which would have made an entire refitting of the turrets necessary, and it is boubtful if they could have been used again.

23. Question. What was the general condition of the protective deck?

Answer. The protective deck was in fairly good condition. Some portions of it had to be cut through in order to get a direct hoist for the debris that had accumulated in the bottom of the vessel.

24. Question. What do you estimate would have been the cost of properly repairing the hull, armor, turrets, and protective deck so as to render them fit for service?

Answer. I have estimated that at $950,000.

25. Question. Is that your opinion at the present time?

Answer. Yes.

26. Question. What was the general condition of the engines and boilers of the *Teresa?*

Answer. They were in bad condition; the engines, when the ship first went on the beach, were covered up by oil and were somewhat protected from the action of salt water; later the vessel had been raised, the engines turned and partially cleaned, thus taking the oil, which had formerly protected them, off, and leaving the bare iron exposed to salt water. This created a galvanic action, and the bearings particularly became very much pitted, so that it became necessary to expend a large amount of work to get them to turn, even with the low speed that she developed when she left Guantanamo.

COUNSEL FOR THE LIBELLANT. The foregoing testimony and the questions which had to do with the condition of the *Teresa* during the latter part of October are objected to as incompetent and immaterial, it appearing from the statement made that the injury sustained by the engines was due rather to the removal of the oil by those engaged in the recovery of the vessel than to the fact that they were submerged. I shall move the court to strike out the testimony.

27. Question. Please explain how the iron of the engines was exposed to salt water after the vessel had been, as you stated, raised.

Answer. That was due to the fact that she was again submerged.

28. Question. What do you understand to be the reason why she was again submerged?

Answer. I have no personal knowledge, as that took place before I took charge.

29. Question. What was the general condition of the boilers?

Answer. They were bad; it was necessary to do a very considerable amount of work to make them stand the low pressure that they were subjected to; notwithstanding this, the constant leaks which remained prevented the steam from doing its work for the engine, and thus, after two engines had been made ready for steaming the vessel north only one could be used.

30. Question. What do you consider would have been the cost of putting the engines and boilers into proper repair?

Answer. I have estimated this at $500,000.

31. Question. Is that your present opinion?

Answer. It is.

32. Question. What was the general condition of the interior part of the *Teresa* below the protective deck?

Answer. The interior part, consisting simply of bulkheads, were distorted, and yet the framework was there, and therefore was repairable.

I mean by that that it would not have been necessary to remove the whole of it.

33. Question. What do you estimate the cost of properly repairing such interior portions below the protective deck?

Answer. I should estimate this at $50,000.

34. Question. In making your estimates of the cost of repairs, have you taken into account the demolition of injured parts?

Answer. Yes.

35. Question. Do you consider that the cost of such demolition would be greater or less than the value of the material removed as scrap?

Answer. Practically the same; that is, to repair, to remove from the ship and remill the old machinery, would cost practically the same as that for new.

36. Question. In regard to the injured portions other than machinery, were there parts which would have to be entirely renewed?

Answer. All of that portion of the ship above the protective deck would, in my opinion, have had to have been entirely renewed.

37. Question. In regard to such portions, would the cost of demolition be greater or less than the value of the material removed as scrap material?

Answer. I think the cost of the removal would just about equal the value of the material scrapped. That relates to the hull; that doesn't relate to the machinery.

38. Question. What do you understand to have been the original cost of the *Teresa?*

Answer. It is given in technical books at £600,000—about $2,950,000.

39. Question. To what extent do you understand that that sum covered her armament and outfit?

Answer. I think it covered quite a large portion of her outfit, including torpedoes and ammunition, possibly. My impression is that the Armstrongs fitted out those vessels quite completely. It also covered all of the armament.

40. Question. Was the outfit of the vessel destroyed?

Answer. Absolutely.

41. Question. To what extent was the armament rendered unserviceable?

Answer. It was all removed from her. I am not sure about that, either, because she had some of the guns taken from the *Oquendo* to send north, and which of them belonged to her, if any, I don't know. The turret guns were seriously damaged, and I think one of them had a shell which remained in the bore of the gun, which entirely disabled it, and it would have had to have been remilled—rebored entirely—so that the question came up in this way: Whether it would pay to remove the turret guns of the *Oquendo,* which were practically intact; and the decision was that it would cost more to remove and rebore them than it would to make new guns; so that the battery of the ship was worth nothing, except as relics.

42. Question. Could any of the Spanish guns have been adapted for practical use in the United States Navy without reboring?

Answer. No.

43. Question. Why is that?

Answer. Simply because they deteriorated from neglect and rust. The bores of the guns became pitted on the inside, and it would have been necessary to rebore them to make them smooth.

44. Question. Were they of the caliber regularly used in the United States Navy?

Answer. No; there was another objection. To bring into the service irregular caliber would have been discountenanced, particularly by the ordnance officers.

45. Question. What do you consider the *Teresa*, including all such portions of her outfit and armament as were covered by the price of £600,000 which you have mentioned, could have been built for in 1898?

Answer. About two million and a half dollars.

46. Question. How much of this sum would you allow for armament and outfit?

Answer. Three hundred and fifty thousand dollars.

47. Question. What do you estimate would have been the amount to be paid for all expenses connected with the raising of the vessel and the bringing her to a port of the United States, if she had been safely brought there?

Answer. About $550,000, made up in this way: The contract called for a certain amount of labor and material to be furnished by the wreckers at so much per day. It was generally thought that this would have amounted to $50,000, and several of us, as I remember it, talked over the probable amount that would have been awarded by a board of arbitration after she was delivered, as required by the contract, at Norfolk, Va. This sum was generally considered to be $500,000. If the wreckers, by delay or neglect, had increased the daily amount for work, then, probably, a less amount would have been allowed for the bonus as authorized, the two together amounting to $550,000.

48. Question. What do you then estimate to have been the net value of the *Teresa* to the United States as she lay on the beach?

Answer. One hundred thousand dollars.

49. Question. Were the conditions under which the work of raising the *Teresa* and preparing her for her voyage north advantageous or not, as regards expense?

Answer. No. The company had to import from the United States only a few skilled mechanics, who were frequently taken ill, due to climatic conditions, while the main amount of labor was left for the crude Cuban laborers, who understood nothing of this class of work, and who were, moreover, subject to the physical conditions of tropical people in general—that is, laziness.

50. Question. If the vessel had been lying off the coast of the United States, how would the expense of such work as was actually done in raising and fitting out have compared with the actual cost incurred?

Answer. It would have been very much less, both in time and in labor, because it would have been done by intelligent persons. I might make this statement clearer by stating that it became a very serious question whether we could keep the skilled labor out of the hospital long enough to get the ship north, so that the contractors were solicitous that the work should be expedited as much as possible.

51. Question. Did the amount of the sum to be ultimately paid the contractors depend upon the safe delivery of the vessel in the United States?

Answer. Entirely so, excepting the portion that was allowed for daily expenses.

52. Question. Was the final start of the vessel on her voyage north made with the consent of the contractors?

Answer. It was made by direction of the contractors.

53. Question. Is that a matter of your own personal knowledge?

Answer. Yes.

54. Question. Have you read the portions of the testimony of Capt. French E. Chadwick and Lieut. Commander Sidney A. Staunton regarding their opinions of the value of the *Teresa!*

Answer. I have.

55. Question. What have you to say in regard to their valuations in general?

Answer. As I remember it, they estimated the repairs to the vessel at $1,000,000, which would have been a very fair valuation if the vessel had been floated and easily transferred to the United States, as was at first expected. The additional sum that I have estimated for these repairs—to wit, $500,000—was mainly due to the fact that extraordinary deterioration went on, due to her being pumped out and then submerged again. They, however, did not take into consideration the extra award that was to be allowed the contractors under the terms of the contract; in fact, I doubt if they considered the question of the contract at the time.

56. Question. Were you applied to by the Board of Inspection and Survey of the Navy Department to give an estimate of the value of the *Infanta Maria Teresa* at the time she was taken possession of by the United States or at the time she was raised?

Answer. I think I was, and yet I am a little mixed whether that was by the request of the board of inspection or in my report in connection with the general salvage.

57. Question. I hand you a paper purporting to be a copy of a letter from you to the Board of Inspection and Survey, and ask whether you understand that to be a correct copy of your letter, dated July 25, 1899?

(Objected to as incompetent and immaterial.)

Answer. I recognize that as a report that I made to the Board of Inspection and Survey.

(Counsel for the United States offers this copy of letter in evidence, to be marked "U. S. Exhibit B."

Counsel for libellant objects as incompetent and immaterial.)

58. Question. This letter or report of yours states: "I estimate the value of the *Maria Teresa* when raised at $100,000, subject to a bill of expenses for services rendered by the Government under the contract with the Merritt Chapman Derrick and Wrecking Company, say $50,000." Does that statement mean that the $50,000 to be paid the Merritt Chapman Derrick and Wrecking Company should be deducted from the $100,000?

Answer. No.

Cross-examination by Mr. HAYDEN, counsel for the libellant:

1. Cross-question. When did you first see the *Teresa?* On October 11?

Answer. On October 11, 1898.

2. Cross-question. Where was she at that time?

Answer. In Guantanamo Bay.

3. Cross-question. You did not see her at all while she was on the beach to the westward of Santiago?

Answer. I did not.

4. Cross-question. You are not familiar, from personal observation, with the work which had been done upon her prior to her arrival at Guantanamo?

Answer. No; only so far as it was turned over to me by my predecessors.

5. Cross-question. You have spoken in your testimony about her being once pumped out and resubmerged. You made that statement, of course, from reports or hearsay?

Answer. Entirely.

6. Cross-question. Since you have mentioned it, please give the circumstances under which she was pumped out and resubmerged, as they have been repeated to you.

Answer. The vessel was discovered with a large hole in her bottom, which was covered by a mat of wood and rubber, and supported, as I remember it, by iron braces. This hole was supposed to be the main entrance for the water which was in the vessel after all the flood cocks had been closed. After the vessel was raised it was found that she was held on the reef by coral rocks protruding through the bottom, and which held her in place. It was then necessary to remove these rocks by blasting, during which time the vessel became again submerged.

7. Cross-question. Were divers employed in the operations for the recovery of the *Teresa?*

Answer. I think there must have been.

8. Cross-question. Would it not have been possible for a diver to have ascertained how the vessel was held in place on the beach where she lay?

Answer. No; not necessarily, because it might have been at a point which they could not have reached.

9. Cross-question. As the matter finally turned out, could not the divers have reached the points where the coral rocks had penetrated the outer skin of the *Teresa?* The plates were punctured, as I understand, somewhere on the starboard side of the bow.

Answer. Yes, yes; I think they might have done so.

10. Cross-question. Do you know whether any intelligent effort was made to ascertain how the vessel was held on the beach?

Answer. I do not.

11. Cross-question. Was the work of recovery placed in charge of contractors from the outset?

Answer. Yes; and yet I think there was an interregnum when the Government assumed charge for a short time. That was when Hobson went down there and took charge.

12. Cross-question. Prior to that time had any work been done by contractors?

Answer. Very considerable, as I remember it.

13. Cross-question. But they were displaced?

Answer. Yes; I don't know how complete that change was. I don't think it was authorized under the contract (this is also hearsay). The work had been so delayed that the Government assumed charge until it started on afresh, and then it was returned to the charge of the contractors.

14. Cross-question. Do you know who had actual charge of the ship when the first effort was made to haul her off the beach, at the time when it was discovered that her outer skin had been penetrated by the coral rock which held her?

Answer. Admiral Watson had the general charge of all the wrecks.

15. Cross-question. But I mean who was in charge of the work of recovery, the contractors or officers of the navy?

Answer. The contractors.

16. Cross-question. Was the work of the contractors done in a systematic and proper manner?

Answer. That I can't say.

17. Cross-question. So far as you observed it, was it done in a satisfactory and expeditious and proper way?

Answer. Yes; considering the disadvantages that they labored under.

18. Cross-question. By taking adequate time, wouldn't it have been possible to take to Guantanamo Bay or the beach west of Santiago, as the case might be, an adequate force of men and an adequate equipment to repair and recover the vessel, so that she might be brought north?

Answer. No.

19. Cross-question. Why not?

Answer. Because the vessel was so completely wrecked that it would have taken a first-class navy-yard to put her in a safe condition to come north, and the nearest point for that was Norfolk.

20. Cross-question. As I understand it, you said on your direct examination the under water body, or the hull proper, of the ship was substantially intact?

Answer. Yes; that is as far as was discovered. The question of punctures and distortions of rivets, etc., could only have been discovered by docking her.

21. Cross-question. The superstructure was the portion which had sustained the greatest injury?

Answer. Yes.

22. Cross-question. That was from fire?

Answer. Yes.

23. Cross-question. There had been no internal explosions?

Answer. No.

24. Cross-question. No evidence of it?

Answer. No.

25. Cross-question. The protective deck was in efficient condition; that is, it served to stiffen the ship, and it was also in efficient condition as a protective deck, was it not?

Answer. Yes; that was the impression.

26. Cross-question. The armor plates were in good condition, were they not?

Answer. In fairly good condition.

27. Cross-question. Do you know how it happened that after the vessel had been pumped dry she was again flooded?

Answer. Only from hearsay that after they broke off the rock which protruded through the bottom it left a gap there which the pumps were not equal to handle.

28. Cross-question. That is, in hauling the ship from the beach, they broke off the rock which filled the aperture that was made?

Answer. No; as I understood, they drilled and broke off the rock from the outside and from the inside, so as to smooth it down to such a point that the vessel could be raised to float over it. As soon as they had done that, the water entered through the aperture and the pumps were not able to control it.

29. Cross-question. You inspected every part of the vessel?

Answer. No.

30. Cross-question. To what extent did you examine her?

Answer. I went down into the interior as far as I could without going into the double bottoms.

31. Cross-question. Then you didn't attempt to go into those?

Answer. No.

32. Cross-question. You inspected the machinery throughout, the boilers?

Answer. Only casually.

33. Cross-question. You didn't go into a thorough examination of them?

Answer. No; I had representatives to do that.

34. Cross-question. You didn't do it in person?

Answer. No.

35. Cross-question. And, for your information with regard to them, relied very largely or altogether on reports made to you?

Answer. Very largely; I inspected the fittings in the engine room, for instance, where the repairs had been made.

36. Cross-question. Do you know by whose order the oil or grease which had protected the machinery when the vessel was first flooded was removed prior to her being floated off the beach?

Answer. I do not. My impression was that the contractors had the vessel free enough so that as soon as they got all the water out they could float her, and they wanted to get the machinery in order to work her up to Guantanamo, or even north; in other words, they had certain machinists there to go to work on the engines while the hull people, as it were, were repairing the damages forward. They were getting that machinery ready when it became necessary to—as I understood, the vessel did fill through the apertures that had been made by blasting the rock.

37. Cross-question. Wouldn't it have been prudent to postpone the work on the engines until the vessel had been floated?

Answer. That, I think, is a question.

38. Cross-question. I ask you, as an expert seaman.

Answer. It is just here: By judging after the fact your vision is not the same as when judging it before.

39. Cross-question. I mean, was not their cleaning the engines due to an overanxiety to save themselves expense and hurry the vessel north? If the men there had made the examination of her that they ought to

have made, wouldn't it have impelled them to leave the engines protected by oil and grease until the ship was afloat? I am speaking of the reasonable precautions that should have been taken by careful men.

Answer. No; I don't think that would have necessarily followed, because, having floated the vessel, having gotten the water out of the vessel to a point where they could work on the engines, they naturally supposed that they would soon have her afloat and that she would not again be submerged.

40. Cross-question. I understand you to say, however, that the divers employed probably could have ascertained that the vessel's outer skin was punctured by rocks which held her.

Answer. Yes; I think they could.

41. Cross-question. I think you testified that in your opinion the *Teresa* could have been duplicated, together with her equipment, in this country, for two millions and a half.

Answer. Yes.

42. Cross-question. Armor, armament, equipment, engines, machinery, and everything that went to make up her original cost of £600,000?

Answer. Yes.

43. Cross-question. Shipbuilding in general is more expensive in this country than it is in England, is it not?

Answer. It was; just about the time of the war I think it was less than abroad. Our iron was very much cheaper, and we had gained sufficient knowledge of shipbuilding to make very good terms in shipbuilding. Afterwards, since that time, the material has gone up so much that it is probably more than it is abroad.

44. Cross-question. Commander Harris had immediate supervision of the repair work, had he not?

Answer. He did.

45. Cross-question. And commanded the naval force on the *Vulcan*?

Answer. Yes.

46. Cross-question. Your information came very largely through his reports?

Answer. Yes.

47. Cross-question. You have mentioned a contract as having been entered into by the United States for the recovery of the ship. Who were the contractors?

Answer. The Government, Secretary of the Navy, and the Merritt & Chapman Derrick and Wrecking Company.

48. Cross-question. That contract is in writing, of course?

Answer. Yes.

49. Cross-question. What proportion of the cost of a second-class battle ship or armored cruiser, like or similar to the *Teresa*, is made up of the cost of the superstructure above her protective deck, exclusive of armor and armament, just the superstructure?

Answer. It would depend a great deal on the character of the vessel, and I should say in the case of the *Teresa* about one-third of $2,900,000.

50. Cross-question. The cost of her engines was probably what, or would be what?

Answer. I should say $400,000.

51. Cross-question. The cost of her hull proper, or under-water body?

Answer. I should say $1,500,000.

52. Cross-question. What would be the cost of her armor and armament; that is, her side armor and turrets?

Answer. I should say $400,000 for the armor and $350,000 for the armament.

53. Cross-question. Seven hundred and fifty thousand dollars in all?

Answer. Seven hundred and fifty thousand dollars in all.

54. Cross-question. And for the hull, or under-water body, how much?

Answer. About the same amount; $750,000.

55. Cross-question. The cost of shipbuilding being less in this country in 1898 than it had been abroad, would it have cost as much to restore the superstructure of the *Teresa* as it cost originally?

Answer. I think it would. The character of the work being done, as it was, in a careful and superior way, as navy-yard work would be, would have made it cost quite as much.

56. Cross-question. Have you been considering the restoration of the *Teresa* to substantially the condition that she was in when new, or her conversion into a first-class ship by the careful work done in United States navy-yards?

Answer. By making her equal to what she was originally.

57. Cross-question. And no more?

Answer. And no more.

58. Cross-question. I have forgotten what you gave as the original cost of her engines and boilers?

Answer. About $400,000.

59. Cross-question. On direct examination I understood you to testify that the cost of repairing the engines and boilers would be about $500,000?

Answer. Yes.

60. Cross-question. Why would that be more than the cost of a new equipment of engines and boilers?

Answer. I don't know that it would be any more; I think it would be about the same; and that the $400,000 for repairs would have been about the cost if any of the old material could have been used.

61. Cross-question. Then perhaps that estimate of $500,000 for restoring her boilers and engines is large; or do you still adhere to that?

Answer. Yes; and yet I include in that the auxiliaries that have not been included in any other part, such as steam steering gear and apparatus for turrets, turning turrets, and ammunition houses.

62. Cross-question. What did all of those things cost originally, in your judgment, approximately?

Answer. I have counted those in as part of the outfit.

63. Cross-question. As part of the $350,000 outfit, equipment, etc.?

Answer. No; as the $500,000; and yet, when you spoke of the cost of the engines I only had in mind the bare engines and boilers.

65. Cross-question. But now, in discussing the original cost of different parts of the ship upon the basis of $2,950,000 for the hull, as I understand it, you have given the hull proper as $750,000; the under water body, exclusive of armor; the cost of the engines and boilers as $400,000; the cost of armor and armament at $750,000 more; the cost of her superstructure, the part above the protective deck, as in round numbers $950,000?

Answer. About that; I had in mind a valuation of $2,500,000.

66. Cross-question. I was dividing up her original cost?

Answer. It would be a very difficult matter to divide it up in that way.

67. Cross-question. And then I understood you to say it would cost about $950,000 to restore that superstructure?

Answer. Yes.

68. Cross-question. In addition to these various items, the cost of the auxiliary engines, apparatus for turning turrets, and steam steering gear would have been how much?

Answer. I have taken it on the basis of $100,000—that is, $400,000 for the machinery, the engines and boilers, and $100,000 for auxiliaries.

69. Cross-question. What was the condition of her steam steering gear and turret-turning apparatus?

Answer. There was no turret-turning apparatus. I don't remember whether the valves of the steam steering apparatus were worked by a temporary rope which had been led up to the forward bridge, or whether the tiller was worked directly by the rope. In other words, I don't remember about the steam steering gear at all.

70. Cross-question. Who gave the order for the *Teresa* to proceed northward from Guantanamo Bay?

Answer. The contractors.

71. Cross-question. What authority had they for giving the order?

Answer. That was a part of their contract.

72. Cross-question. Had they had absolute control of the ship?

Answer. Yes.

73. Cross-question. There was a naval force on board of her, was there not?

Answer. There was.

74. Cross-question. That was part of Commander Harris's command, was it not?

Answer. It was part of the naval force under my command.

75. Cross-question. But I mean under his immediate command?

Answer. Yes. He was simply there to take charge of that portion, to take care of the discipline, and to represent the Government on the spot. He had no control over the ship whatever.

76. Cross-question. Who selected the course followed by the *Teresa* in coming north?

Answer. The contractors.

77. Cross-question. In your judgment as a commander of years of experience and familiar with the waters of the West Indies and those adjacent to them, was the course selected a wise and prudent one, taking into consideration the season of the year, or would the ship probably have done better had she taken the Bahama Channel?

Answer. Very much better in the way she went.

78. Cross-question. It was a wise course to take?

Answer. Yes.

79. Cross-question. For what reason?

Answer. Simply because the Bahama Channel at that season of the year is subject to northerly winds, which cause a choppy sea, which, in my opinion, would have caused that ship to sink on the first effects of it; and, in my opinion, no seaman would ever go into the Gulf Stream in a northeast gale if he could possibly keep out of it; and the first principle

that we learned in seamanship on the blockade was to get out of the Gulf Stream altogether. That question has been discussed; so I speak feelingly on it.

80. Cross-question. In what way, in connection with your various duties as a naval officer, have you become familiar with the cost of shipbuilding and the construction of the various parts of a ship?

Answer. I can only repeat what I have stated in my direct examination.

81. Cross-question. Has that brought you in direct contact with the building of modern steel vessels?

Answer. Yes; I think that my experience in the last two years has brought me in direct contact with it.

82. Cross-question. With the construction as well as the equipment and management?

Answer. Yes.

By the Examiner:

Question. Do you know anything or can you state anything further relative to this cause, or of interest to any party thereto? If so, please state it.

Answer. No; I think not.

COLBY M. CHESTER,
Captain, U. S. Navy.

U. S. EXHIBIT B.

OFFICE OF GENERAL INSPECTOR OF U. S. S. KENTUCKY,
NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY,
Newport News, Va., July 25, 1899.

SIR: 1. I have to acknowledge the receipt of the board's communication of July 14th in relation to the *Infanta Maria Teresa*.

2. I became senior officer present and in charge of the wrecking of Spanish vessels on the south coast of Cuba about October 12, 1898.

3. At that time the *Maria Teresa* was anchored in Guantanamo Bay, Cuba, undergoing repairs preliminary to her departure for Norfolk, Va., the wrecking company's force being augmented by men from the U. S. S. *Vulcan*. Lieut. Commander Ira Harris, U. S. N., commanding the *Vulcan*, was in immediate charge of the Government's interests in the salvage of the *Maria Teresa*, and had been directed to keep an account of all matters that might be required for a board of appraisement.

4. The condition of the *Maria Teresa* was that of a wreck with nearly all of her interior compartments gone or warped out of shape; her upper works above protective deck practically useless for service; the machinery greatly injured by water, with one engine in temporary working order for the trip north, and the other engine made available for an emergency, but with not sufficient boiler power to run the two together. A large hole made by grounding on the rocks existed in the ship's bottom, which was fitted with a mat for keeping water out until she could be dry docked. In this condition she started for Norfolk, Va.

There were several guns saved from the other vessels of the Spanish

fleet that were sunk but not raised, in the vicinity of Santiago, Cuba, but I am unable to furnish a list of them.

5. I estimate the value of the *Maria Teresa* when raised at one hundred thousand dollars ($100,000), subject to a bill of expenses for services rendered by the Government under the contract with the Merritt-Chapman Derrick and Wrecking Co.—say, fifty thousand dollars ($50,000).

6. The only article recovered from the sunken vessels not raised, which is not referred to above was a Hotchkiss revolving cannon, found on the bottom near the wreck of the *Reina Mercedes*, valued at about ten dollars ($10).

Very respectfully submitted.

C. M. CHESTER,
Captain, U. S. Navy.

To the BOARD OF INSPECTION AND SURVEY,
Navy Department, Washington, D. C.

Deposition of Ira Harris (for the United States).

IRA HARRIS, having been produced as a witness, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and thereupon deposes and testifies as follows:

By Mr. BINNEY:

1. Question. Please state your name, age, and occupation.

Answer. Ira Harris; 57; marine superintendent Army transport service.

2. Question. How long have you been marine superintendent of the Army transport service?

Answer. Twenty-one months.

3. Question. What are your duties in general?

Answer. The duties are to take charge of the seamen's branch of the service in general, including the repairs to the deck, hull, and stewards' department of the Army transports, and the direction of all transports after they reach the harbor of New York; that is about as general as I can make it.

4. Question. Have you ever served in the United States Navy?

Answer. I am a graduate of the United States Naval Academy. I graduated in May, 1863, and resigned in May, 1871, being then a lieutenant-commander. I was appointed a lieutenant-commander at the breaking out of the Spanish-American war, and as soon as the repair ship *Vulcan* was decided upon was ordered to command her. I commanded that ship nearly all the time till she was placed out of commission after the war was over. I was then mustered out of the service, and immediately appointed to my present position.

5. Question. Did you see active service during the civil war?

Answer. Yes; I did. I was in the West Indies Squadron and in the North Atlantic Squadron for two years of the civil war.

6. Question. During the period between your resignation from the Navy and your reentering the service what was your occupation?

Answer. Mostly manufacturing. I left the Navy with the expectation of going into iron shipbuilding, having made that a study for some five years previously; but instead I went into rolling mill business. I have had charge of rolling mills, machine shops, forges, and have also been somewhat in railroad business. I was for nearly seven years in the employ of the American Steel Barge Company, as purchasing agent or auditor, and, as such, was engaged in repairing and building steel ships, both for lake and ocean service.

7. Question. Were you in any way concerned in the naval action at Santiago on July 3, 1898?

Answer. No; I wasn't there. The ship I commanded was in the harbor of Guantanamo at that time.

8. Question. Have you any personal interest in the result of this suit?

Answer. No.

9. Question. When you commanded the *Vulcan*, were you ordered to any duty in regard to the *Infanta Maria Teresa?*

Answer. Yes; I took charge of the work of temporary repairs and bringing her north, other than that done by the Merritt and Chapman Derrick and Wrecking Company.

10. Question. When were you ordered to this city and how long did it last?

Answer. I received no orders other than that incident to my position as being in command of the repair ship. At least I remember no special orders, except twice I was ordered, either verbally or otherwise, to make an inspection of the ship before she was pulled off the beach. I was also present and had men on board of her when she was pulled off the beach and the following morning commenced work regularly upon her. This work continued until her abandonment early in November. I personally acted as foreman over this work, accompanying the men there and working from 7 a. m. until dark every day.

11. Question. Previous to your first inspection of the *Teresa* what knowledge had you acquired in regard to the vessel, and how had you acquired it?

Answer. Previous to my first inspection of her I had seen her in the harbor of New York a number of times, but had never been aboard.

12. Question. About how many men did you have working under you in the repairs which you made on the *Teresa?*

Answer. I had about seventy-five mechanics generally. The men gave out very rapidly and very few men could remain a whole week on the work, so that the number was constantly fluctuating. We had besides, in the last few weeks, drafts of men from the different ships to aid in the work, and we had many Cubans and Spaniards doing laboring work—the clearing out of foul matter and sand—and Cuban carpenters making temporary structure to protect us in the voyage north. I think that, altogether, about two hundred men worked in the ship during the last few weeks before sailing; but many of these men worked under Captain Chittenden, who looked after certain parts of the work, using details of men, for which he drew on me.

13. Question. How many times did you visit the *Teresa* before she was taken to Guantanamo?

Answer. I think three times. The first time that I was in the ship

was while Captain Sharp was at work pumping her out. The second time was when Admiral Watson was senior officer, and I went with him at his request. This was about a week before Captain Sharp was relieved on that ship, and I believe I made one subsequent trip before the time she was pulled off the beach. As to that I am not certain.

14. Question. In the pursuance of your duties to what extent did you become familiar with the condition of the various parts of the vessel?

Answer. I was thoroughly familiar with the vessel, except that I never put on the diving suit and went outside. I never dove; I did everything else.

15. Question. What was the general condition of the hull of the *Teresa?*

Answer. The hull below the protective deck was, with the exception of a very small space under her foremast, or near her foremast, in perfect order. It did not appear to be strained; no cracks, nothing showing at the junction of the protective deck and the sides; no leaks below water to speak of. The sides where the armor was were generally perfect; the armor shelf was perfect; the only damage by fire below was around the torpedo openings, where the wood was thoroughly calcined and ready to drop out. About the protective deck and the side armor the hull was badly injured; the beams were all bent and twisted; could not have been used again by rerolling; the frames might have some of them been used again, but would not have been worth taking out; the side plating could have been rerolled and, after the ends were cut off, again used had she been in the merchant service, but not in the Government service. The stringer plates were too badly buckled to be of use; the bulkheads could have been repaired; the turret foundations, spindles, and bases, including ammunition openings, could have been repaired; the turrets, with the exception of the moving parts and connections, were practically intact.

16. Question. Was this condition that you have spoken of in regard to the part about the torpedo openings readily discoverable from the outside?

Answer. It was not discovered until shortly before we left Guantanamo, and was then only discovered by me by sounding with a hammer, when the wood, which we supposed was all there, fell out. This would have caused the loss of the ship if it had not been discovered.

17. Question. Was the defective condition of the side plating above the protective deck readily discoverable before you left Guantanamo?

Answer. No; I didn't discover it to be as bad as it was, and yet with the experience which I gained then I could detect it again under similar circumstances.

18. Question. What is the condition to which you have referred, that you did not detect it before you left Guantanamo?

Answer. The thrust of the beams and bulkheads, as they expanded, and also of the plates longitudinally, was largely taken up by the elongation of the rivet holes, and when the plate cooled it resumed its original appearance, but the rivet holes remained elliptical. This was covered up by the rivet heads, but after the ship got into the gale of wind in which she was lost a multitude of leaks were all over her sides as she worked. This could have been discovered, if I had been sufficiently expert, by noticing the calking between the frames and the plates.

19. Question. Do you consider that it was a matter that would have been likely to have been discovered by any one without the experience which you received from having been on the vessel during the storm afterwards?

Answer. No; I do not. The experienced wrecking masters were equally deceived with myself.

20. Question. Was the leaking due to this condition a serious matter?

Answer. Yes; it was very serious, particularly because of the condition of the ship otherwise. Nearly all of the pumps were belt-driven, and the water penetrating everywhere made the belts slip so that we could not keep the ship free. I wish to state that the leaks from the rivet holes did not give the main body of water which came on board. There was no wooden deck over the iron deck forward of her turrets, and the seas came 4 feet high on her fore turret; so that through this deck a large body of water entered the ship. Also the largest body of water flowed into the fire rooms from the coal bunkers, washing out the coal, throwing out the floor plates and choking up the drainage leading from the forward fire room to the after one, where we had large steam-driven pumps which could have kept it clear. The ship had a lateral working at the mast, opening 2 inches on each side. In the gale she worked laterally; her width increased and decreased 4 inches as the seas struck her.

21. Question. What do you consider to be a fair estimate of the value of the hull of the *Teresa* as she lay on the beach near Santiago, exclusive of protective deck, armor, and turrets?

Answer. Two hundred and fifty thousand dollars.

21½. Question. What do you consider to be a fair estimate of the value of the protective deck, armor, and turrets of the *Teresa* as she lay on the beach at Santiago?

Answer. Three hundred and seventy-five thousand dollars.

22. Question. What do you consider to be a fair estimate of the value of her machinery at that time?

Answer. Understanding that by the term machinery you mean all machinery and motive power, boilers, etc., I consider that to be worth $500,000. Her main boilers were worth, in my judgment, 90 per cent of their cost; her main engines were worth two-thirds of their cost; her auxiliary engines were, with the exception of her main wrecking pump, practically valueless; her drainage and connections valueless; her auxiliary boilers practically nothing.

23. Question. If the *Teresa* had been brought north for complete repair, would it have been necessary to remove any considerable portion of the injured material upon her?

Answer. It would be necessary to strip her to the protective deck, with the exception of the part of the sides above that deck covered by the side armor.

24. Question. Would such stripping have been a costly operation?

Answer. I consider that to take the ship to pieces in that way, preserving the turret foundations and certain parts of the magazines, as the Spanish call them, intact, would cost $100,000, more than the value of the scrap removed.

25. Question. Should that $100,000 be properly deducted from the total of the figures you have already given in order to reach a net figure for the value of the vessel as she lay on the beach?

Answer. Yes, sir.

26. Question. Have you ever estimated the cost of raising the *Teresa*, making the temporary repairs, and bringing her to a port of the United States, if she had been brought there?

Answer. I have never estimated what it did cost, although I have been over a lot of accounts; but I am satisfied that a contract could have been entered into to have taken that vessel from the beach and delivered her at Norfolk for $250,000.

27. Question. Should that figure properly be deducted from the figures you have already given to reach a figure for her net value, as she lay on the beach?

Answer. Yes, as you put it.

28. Question. In your opinion, as a seaman, how did the route by which it was attempted to take the *Teresa* north compare in safety with any other route which might have been selected?

Answer. I don't think there is any question at all on the subject. I selected that route, and I never questioned but what it was wise. The route that she took is by far the shortest route, and has no point more dangerous than the rounding of the western end of the island of Cuba. For a vessel drawing as much as the *Infanta Maria Teresa* there is no harbor from Havana north on our coast in as short a distance as the exposed portion of the route we took. There is, therefore, no question in my mind, or in that of anyone who considers the actual facts and considers the conditions, as to the wisdom of choosing this route. The navigating officer of the Merritt and Chapman Derrick and Wrecking Company, the navigating officer of the *Vulcan*, and one or two other experienced men met with me, and we agreed on the route and method of bringing her north.

29. Question. Were you applied to by the Board of Inspection and Survey of the Navy Department for a statement of your views in regard to the value of the *Infanta Maria Teresa?*

(Objected to as immaterial.)

Answer. Yes.

30. Question. I hand you a paper purporting to be a copy of a letter, dated July 18, 1899, from you to Rear-Admiral Frederick Rodgers, and ask if you wrote such a letter in answer to the request from the Board of Inspection and Survey?

(Objected to as irrelevant and immaterial.)

Answer. Yes.

(Counsel for the United States offers this paper in evidence, to be marked "U. S. Exhibit C.")

Cross-examined by Mr. HAYDEN, counsel for the libellant:

1. Cross-question. When did you first see the *Teresa* on the beach west of Santiago?

Answer. I do not remember. It was late in July or early in August.

2. Cross-question. How was she lying then with reference to the shore, and what was apparently the character of the bottom on which she lay?

Answer. The bottom is sandy.

3. Cross-question. Coral sand?

Answer. Yes, sir; and strewn with bowlders, at the mouth of a small

creek, and her bow was almost dry at low water. She was low up on the beach.

4. Cross-question. You mean at low water her stem was practically out of water?

Answer. Yes, very close to it. The beach shelves at an angle of 45 degrees.

5. Cross-question. How was her stern?

Answer. Her stern was afloat.

6. Cross-question. That is, did not come in contact with the sand?

Answer. I think so, I think her stern was afloat.

7. Cross-question. She did not lie on the beach throughout her entire length?

Answer. I think not, but when I first saw her she was partially pumped out aft.

8. Cross-question. What work, apparently, had been done in the direction of her recovery when you first saw her?

Answer. Nothing but an examination, building some sheds on her for the protection of the men, and the installment of donkey pumps to free her from water, and I think that her aft compartments were about half pumped out at that time. I remember that her berth was at a level with the water. Her berth deck was just about awash.

9. Cross-question. And her compartments forward at low tide were comparatively dry?

Answer. No, her compartments forward were full of water down underneath. But she stuck right up close on the beach; but it was so steep that her compartments forward were full of water. We couldn't go below the berth deck forward on either of the trips that I made there prior to shortly before she was pulled off.

10. Cross-question. Had any effort been made to haul her off the beach prior to your first visit?

Answer. No, I think the first effort was between the first and second visits, and not to haul her off the beach, as she would have come off the beach herself, on account of the slope, if they hadn't let the water in again.

11. Cross-question. What was the occasion of letting the water in again?

Answer. I know that only by hearsay. But the report was that they didn't think it safe to let her come off, and as quick as they saw that she was going to come off they let water in again, lest she should go off and sink.

12. Cross-question. It was found subsequently, I believe, that a rock or coral bowlder protruded through her outer skin about her foremast; that is true, is it not?

Answer. Yes, sir; a rock did stick clean through her.

13. Cross-question. Were divers employed in the examination of the vessel before she was afloat?

Answer. Yes, sir; but no divers could reach there while there was that rock in the way.

14. Cross-question. Could not divers have gone between her double bottoms to ascertain?

Answer. There was no double bottom, properly speaking, where this

hole occurred. There was one hole about 20 inches in its longest diameter. A number of small holes and cracks, the largest of which extended from the large hole abaft the next bulkhead letting water into two compartments of the ship. This crack was in no place open more than 2 inches. The main hole was filled by this rock, which was subsequently removed on the inside of the ship.

15. Cross-question. When was it removed?

Answer. Not very long before the ship was pulled off. It was removed on Captain Chittenden's direction; after Captain Sharp had been relieved. The hull rested right on the sand, except where the sand had been sucked into the ship, and I presume over a hundred tons of sand entered the ship through this hole, the sand being in the after one of these compartments 5 or 6 feet deep. Old mattresses and blankets had been drawn into this hole, and the pressure was so great as to render them nearly as hard as wood.

16. Cross-question. Then didn't they render that compartment practically water-tight, so that they could prevent water from coming into the ship through the hole?

Answer. There were three rooms, I believe, certainly two, that were left full of water until some time after the ship reached Guantanamo, these rooms all being comparatively small.

17. Cross-question. And perfectly segregated by bulkheads from the rest of the ship?

Answer. Yes.

18. Cross-question. So that they did not interfere with her floating?

Answer. No, they were not of sufficient size, and were so full of foul matter that it was weeks before we could work in there.

19. Cross-question. In your judgment couldn't the *Teresa* have been floated off the beach on the first attempt after the water had been partially pumped out of her?

Answer. Yes; in my judgment she would have gone off the beach herself if they had pumped the water out of her as far as they could.

20. Cross-question. She would have then floated for a reasonable distance?

Answer. I think so now.

21. Cross-question. What was the condition of her boilers, machinery, and engines when you first examined them?

Answer. I made no examination of those parts until we commenced work on them.

22. Cross-question. In what condition were they found then?

Answer. The boilers, in very good condition; the main engines, set or froze in the second position; the auxiliary engines and drainage, as heretofore testified.

23. Cross-question. Had any damage been done to the boilers and engines through pitting, owing to the action of salt water?

Answer. To the engines, yes; to the boilers, no.

24. Cross-question. Were the engines covered with oil or grease when you came to examine them with a view to their repair at Guantanamo?

Answer. I couldn't say; they were covered with slime and dirt to such an extent that I don't know whether there was anything on them at all. They were in very foul condition.

25. Cross-question. Do you know that prior to that they had been partially cleaned, the oil and grease wiped off of them?

Answer. I know that work had been done on them and that they had been turned over; there was evidence; jacked over.

26. Cross-question. In your judgment would they not have sustained far less damage if the oil and grease which were on them when the *Teresa* went ashore had been left until she was permanently floated; that is to say, didn't the removal of the oil and grease and the readmission of salt water result in great injury to them through pitting and otherwise?

Answer. The engines were in a worse condition by reason of their having been turned over and gotten ready before they were submerged the second time. Whether the cleaning did any material harm, or how much cleaning was done, I have no reason for knowing.

27. Cross-question. It is true, is it not, that iron and steel, when covered to a certain extent with oil or grease, do not deteriorate through oxidization?

Answer. Yes.

28. Cross-question. Or deteriorate very slowly when permanently submerged in salt water; that is true, is it not?

Answer. Yes; and it is also true that a coating of rust protects against further oxidization.

29. Cross-question. But it is true, is it not, that intermittent exposure of steel and iron to the action of salt water does deteriorate it quite rapidly?

Answer. Yes; it is quite true. If the main engines of the ship had not been touched till she was finally floated there would have been less effect or oxidization. If the port main engine had been left in proper position when it was jacked over the first time it would have been the most useful of the two engines. As it was, the reversing gear was broken and it was temporarily useless.

30. Cross-question. Is it not true that the partial pumping of the vessel and the readmission of water to her while on the beach west of Santiago had a great deal to do with the injury to the auxiliary boilers, engines, and smaller machinery on board?

Answer. I think not. I think they were so badly injured by fire that the subsequent pounding didn't hurt them.

31. Cross-question. There were no evidences of internal explosions in the *Teresa*, were there?

Answer. No, sir; except by shell.

32. Cross-question. Those were comparatively small and local?

Answer. Yes; they were small and local. Both water and steam pipes had been put out of action.

33. Cross-question. The vessel, as she lay on the beach, had received comparatively a small structural injury? By structural injury I mean the injury other than the local perforation of her skin or injury caused by shot holes.

Answer. She wasn't materially injured by grounding, either at the time or subsequently.

34. Cross-question. The chief injuries which she had sustained were sustained by the superstructure; the portion above the protective deck, as I understand?

Answer. Yes, sir.

35. Cross-question. And that was due to fire?

Answer. Yes, sir.

36. Cross-question. The protective deck remained adequate for purposes of stiffening the ship, did it not?

Answer. Yes, sir.

37. Cross-question. It wasn't injured?

Answer. It wasn't injured at all.

38. Cross-question. Didn't that serve to exclude water from the lower hold of the ship when water came over the bows or over the decks?

Answer. It sufficed to float the ship to Cat Island.

39. Cross-question. That was due to the condition of the protective deck?

Answer. Yes, sir.

40. Cross-question. Do you know what was the original cost of the *Teresa* to the Spanish Government?

Answer. No, I don't know; I never looked it up.

41. Cross-question. What, in your judgment, would it cost for a vessel like the *Teresa*, including her armor, but not her armament, in 1898 in the United States?

Answer. About $2,600,000.

42. Cross-question. In your opinion, to remove the superstructure of the *Teresa*, the portions which had been damaged, and reconstructing it, selling the old material as scrap, would have resulted in what net expense?

Answer. Three hundred thousand dollars.

43. Cross-question. What would repairs to the under-water body or portion of the vessel below the protective deck have cost?

Answer. Fifty thousand dollars.

44. Cross-question. What would have been the cost of repairing her main engines and boilers, putting them in a thoroughly efficient condition?

Answer. To repair them and put them in an efficient condition would not have cost over $20,000; but they would not then be as valuable as they had been before they were submerged.

45. Cross-question. They would then have been good and serviceable?

Answer. Yes.

46. Cross-question. What would have been the cost of replacing the auxiliary engines and machinery which had been wholly or partially destroyed by fire or otherwise?

Answer. That is a hard question; $250,000; by which I mean the auxiliary boilers, the torpedo ejection machinery, the pumps, the drainage, the steam and water pipes, and plumbing.

47. Cross-question. In saying that the *Teresa*, if duplicated in the United States in 1898, would have cost $2,600,000, you intended to include not only the vessel's hull and armor but her equipment as well, did you not?

Answer. But not her armament. Everything but her armament.

48. Cross-question. The equipment of the *Teresa*, I assume, was destroyed?

Answer. Over 90 per cent of it was destroyed.

49. Cross-question. What would it have cost to restore that to an efficient condition?

Answer. What I call equipment would cost half a million.

50. Cross-question. That would all enter into your estimate of $2,600,000?

Answer. Yes, sir; I count in $500,000 for equipment to put it in an efficient condition.

51. Cross-question. What was the condition of the *Teresa's* armament—her guns—when you first saw them?

Answer. The small guns, the machine guns, and secondary battery were worthless from fire. The two turret guns were entirely good; the fire did not injure much inside of the turrets. I supposed that the gun mounts were somewhat injured, but during the gale the gun in the after turret ran in and out twice, and then something gave way and the gun pointed at extreme elevation. The 5.5 guns were removed before I examined any of them, but afterwards four of this sized guns, either from the *Teresa* or from one of the other cruisers, were put back on board the ship and were lost in her. These guns had never been fired but a very few times. The edges of the rifling had not been rounded by use. Both magazines were full of ammunition; the shell cases for the powder were removed by the wrecking company and the shell cases sent north, the 6-pounder and 1-pounder ammunition in large quantities remained on board until shortly before we sailed, when it was transferred to the *Senior*.

52. Cross-question. What, in your opinion, was the value of the *Teresa's* armament after the battle of July 3?

Answer. Do you mean to our Government or to the Spanish Government?

53. Cross-question. For purposes of sale?

Answer. I should think that the two turret guns were worth $30,000 apiece; that the 5.5 guns were worth $10,000 apiece, which is two-thirds of their cost.

54. Cross-question. How many were there of the 5.5 guns?

Answer. Originally, I believe there were ten; I din't see them myself.

55. Cross-question. What have you to say with regard to other armament and ammunition, as to value?

Answer. I do not consider the ammunition, except the 6-pounder and 1-pounder, was of any material value. The torpedoes and small guns were entirely worthless. The 6-pounder and 1-pounder ammunition could be used in our guns.

56. Cross-question. I ask for the value of those for purposes of advantageous sale, either in this country or abroad.

Answer. Not over $10,000 for all the ammunition.

57. Cross-question. The *Teresa* had an electric-light plant on board?

Answer. Yes, sir.

58. Cross-question. In what condition was that?

Answer. It was entirely destroyed.

59. Cross-question. In the wrecking operations in the vicinity of Santiago I believe the armament was recovered from vessels other than the *Teresa?*

Answer. In no case were the large guns recovered and in no case were the turret guns, and none of the battery of the *Cristobal Colon*, which had different gun mounts, was recovered. We had no derricks or

machinery capable of lifting the turret guns or the turret tops from above the turret guns.

60. Cross-question. What armament was recovered from the other vessels?

(Objected to as outside of the scope of the examination in chief.)

Answer. All of the 5.5 guns of the *Vizcaya* and *Oquendo*. I think all of the 5.5 guns were taken off of the *Maria Teresa*, *Oquendo*, and *Vizcaya*, and all, except the four that were replaced in the *Teresa*, were saved.

61. Cross-question. In your opinion, what was their value for purposes of advantageous sale?

(Same objection as heretofore stated.)

Answer. I have already said $10,000 apiece.

62. Cross-question. What military stores and equipment were recovered from the vessels other than the *Teresa?*

Answer. I know of none except the guns, shell cases, and some small arms.

63. Cross-question. What, in your opinion, would be a fair valuation of the naval supplies, small arms, and material that you have mentioned recovered from vessels other than the *Teresa?*

Answer. Ten thousand dollars for each ship.

64. Cross-question. That is to say, everything recovered from the *Vizcaya* and *Oquendo*, exclusive of the 5.5 guns, was worth $10,000?

(Same objection as heretofore stated.)

Answer. On each ship.

65. Cross-question. What have you to say with regard to the work of recovery performed on the *Teresa* by the Merritt & Chapman Derrick and Wrecking Company? Was a sufficient plant supplied?

Answer. I think it was.

66. Cross-question. Was there a sufficient force of men employed by the wrecking company for the work in hand?

Answer. Yes; if you consider the cooperation of the Navy.

67. Cross-question. That is, you could not have been more successful with a larger force of machinists and mechanics?

Answer. No; I think I had all that I could use to advantage, and I furnished Captain Chittenden and his assistants all the men he asked for.

68. Cross-question. Who prescribed the method of temporary repairs?

Answer. All of that work was done on consultation of Captain Chittenden and myself. In general I did everything above water and he everything below water; but we were working together all the time so closely that it would be impossible to say what was decided upon by either of us?

69. Cross-question. How were the holes or cracks in the *Teresa's* bottom, which were caused by her grounding west of Santiago, repaired for the purpose of her trip north?

Answer. They were cofferdammed by means of cement on the inside and patched by a very complicated and scientific arrangement on the outside. This patch, which was constructed mainly of wood, was secured by chains and ropes passing around her bow, overhead, and set up by turn buckles on her forecastle. She did not leak, even during the gale, at all, as far as we knew, through the holes in her forward bottom.

70. Cross-question. Could not further and more complete repairs to the ship have been made at Guantanamo or in Habana?

Answer. Further repairs could have been made and the ship's drainage opened if sufficient time had been given us; but as the northeasterly gales generally commence about November 15 it was necessary to have the ship start before November 1, or wait until the following summer. The gale in which she was lost struck her November 1, and there were no three consecutive days from that time till Christmas without a gale of wind in that latitude, that locality.

71. Cross-question. The vessel could have been quite thoroughly repaired at Habana, could she not?

Answer. No, she could not very well have been repaired in Habana. To make the passage to Habana was nearly as dangerous as to make it to Norfolk. The only question in my mind was whether the ship should not have remained in Guantanamo until the following summer, when she could have made the voyage in safety.

72. Cross-question. Who gave directions for the *Teresa* to sail for Norfolk from Guantanamo?

Answer. They were received from the Navy Department.

73. Cross-question. They were directed to you?

Answer. No, they went though the senior officer present: that was Captain Chester.

74. Cross-question. And you received your orders——

Answer. I received my orders from Captain Chester to proceed north, and so did Captain Chittenden get his orders from Captain Chester. He was really in charge of the ship until abandonment.

75. Cross-question. Do you recall the date when you received your orders to sail from Captain Chester?

Answer. It was about October 10 that I got those orders.

76. Cross-question. Were they in writing?

Answer. Yes, sir.

77. Cross-question. That is to say, your orders came to you in regular course, just as they would come to take any naval command?

Answer. Yes, sir.

78. Cross-question. The record of this is kept at the Bureau of Navigation in Washington?

Answer. Undoubtedly; yes, sir.

79. Cross-question. Have you a copy of those orders here?

Answer. I think so, but I am not certain.

80. Cross-question. Will you please have a copy of your orders made, together with any indorsements thereon, and have it appended to this deposition, to be marked "Exhibit I. H., No. 1."

Answer. I will, if I have it or can procure it.

81. Cross-question. Did the wrecking company exhibit anxiety to get the ship away from Guantanamo on her way north?

Answer. The wrecking company were anxious for more time to get her ready.

82. Cross-question. Then the wrecking company was not anxious to hurry away?

Answer. No; other than if she was to go that fall their representative recognized the necessity of going as early as we could.

83. Cross-examination. But he was not anxious?

Answer. He was not satisfied with the condition of the ship when we left Guantanamo, although he yielded and authorized her going.

84. Cross-question. Were you satisfied with her condition when she left Guantanamo?

Answer. That is a pretty broad question.

85. Cross-question. Were you satisfied that she was in as seaworthy a condition as she could be placed in at Guantanamo?

Answer. In the length of time given us.

86. Cross-question. Without reference to the length of time?

Answer. No, sir; I was not, but I considered that if we had fair weather she could come north safely. I was perfectly satisfied, and so, I believe, was the wrecking master, that if we struck a northeast gale we would lose the ship.

87. Cross-question. But you are satisfied that had you been allowed to remain with the ship in Guantanamo during the winter, repairs could have been made which would have made her seaworthy?

Answer. Yes; well, repairs could have been made which would make her seaworthy in any summer weather, but no repairs could have been made in Guantanamo which would have saved the ship in a gale of wind such as struck her, and she could have made the passage in summer in the condition she was when she left Guantanamo.

88. Cross-question. What proportion of the cost of a steel vessel of like tonnage and construction with the *Teresa* is made up of the cost of her protective deck, armor, and under-water body; that is, what proportion does the cost of that bear to the total cost of the completed ship?

Answer. I have never been engaged in the manufacture of men-of-war, and when this matter first came up had never figured on the cost of armor or protective decks. The motive power of a first-class steamer of the size and character of the *Infanta Maria Teresa* is 40 per cent of her cost—that is, engines, boilers, and machinery generally are 40 per cent of a merchant steamer. The hull, if not unusually subdivided, also costs about 40 per cent of her total cost, the remainder being what might be called equipment—20 per cent. I suppose that if that ship cost $2,500,000 outside of her armament, her motive power cost $700,000. I presume that the motive power of the *Teresa* cost in the neighborhood of $700,000.

89. Cross-question. Prior to the removal of the *Teresa* from the beach west of Santiago blasting was done, was it not; that is, the rocks which surrounded the perforation in her bottom were blasted?

Answer. Yes, sir; there were one or two shots put in that rock.

90. Cross-question. Did this result in any damage to the ship?

Answer. Nothing to speak of.

91. Cross-question. What damage was done by them?

Answer. All the injured part of that ship's bottom covered a space of 10 by 12 feet, and the main crack and main hole at least were caused by the pinnacle of rock on which she settled. I doubt if the blasting did much good or much harm.

92. Cross-question. You can not tell, you say, in what way the ship took in the greater part of the water which came on board during the storm in which she was finally lost?

Answer. No; I don't know where it came, but it came into the fire room from the coal bunkers; it came into the forward fire room from the coal bunkers. The sides of the ship above the armor leaked over her whole side. The ship was rolling her sponsons under where her upper deck had been, and the water penetrated the side all over except where the armor was; and it also came in through the forecastle, forward of the forward turret, and was stopped by the forward casemate.

93. Cross-question. How far were you from Cat Island when the ship was abandoned, approximately?

Answer. Somewhere over 30 miles.

94. Cross-question. Can you estimate how long it must have taken the *Teresa* to float those 30 miles, after her abandonment?

Answer. She was seen to take the ground at Cat Island, and it is a matter of history how long it took her; I don't remember; I think it was two days.

Redirect examination by Mr. BINNEY, counsel for the United States:

1. Redirect question. You have stated that in your opinion the *Teresa* could have been pulled off the beach after she was pumped out the first time. Do you mean to imply that the officers of the wrecking company in charge were culpable or negligent in the course pursued by them?

Answer. No, sir.

2. Redirect question. Do you regard the feasibility of getting her off at that time as a matter as to which opinions might differ?

Answer. Not as to whether she could be gotten off, but as to whether she would sink after she got off.

3. Redirect question. Have you had anything to do with the selling of ship's guns?

Answer. No, sir; I might say I base my figures relative to the cost of the guns.

4. Redirect question. What relations do your figures bear to the cost?

Answer. I understand that the cost of one of those turret guns with its mount is, approximately, $40,000—something over $40,000, and of the 5.5 guns $15,000.

By the examiner:

Question. Do you know anything, or can you state anything further relative to this cause, or of interest to any party thereto? If so, please state it.

Answer. I do not.

IRA HARRIS.

U. S. Exhibit C.

War Department,
Army Transport Service,
Army Building, Whitehall Street,
Pier 22, Brooklyn, N. Y., July 18th, 1899.

Rear-Admiral Frederick Rodgers, U. S. N.,
President Board of Inspection and Survey,
Navy Department, Washington.

Sir: I have your letter of the 15th inst. relative to the "condition of the *Infanta Maria Teresa* at the time when raised by the Merritt and Chapman Derrick and Wrecking Company."

As I personally worked in the *Infanta Maria Teresa* from the day she was raised to the abandonment, I probably know as much about her value at that time as anyone, but I can hardly tell what should be included in the estimate you ask for. I will therefore make a general statement, and supplement it by details if you request them.

The ship's protective deck was in perfect condition. The foundations of both turrets were intact and needed no repairs. The tops of these turrets were uninjured. Their braces and gun mounts were uninjured except by lack of care subsequent to the battle, and as the working parts were all above water and protected by the tops they were practically as good as new. These guns had never been fired but a very few times, and showed no signs of erosion; had never been struck by our shell, and, in fact, during the gale prior to the abandonment the after gun ran out (by the roll of the ship) and back, and out again the second time, when something gave way and the gun remained run out. The side armor of the *Infanta Maria Teresa* was put on without projecting shelf in such a manner that it was only by sounding that we could tell where she was plated. It was absolutely uninjured. The 5.5″ guns of her battery were also uninjured, but were removed by the Merritt and Chapman Derrick and Wrecking Company prior to her leaving Guantanamo. However, there were on board of her at the time of the abandonment four guns of this size whose carriages were in order, and which were mounted there because the Senior was unable to handle them. These guns were lost in the ship, of course, but I suppose might be included in the estimate of the property on board, just the same as if they were part of her original battery of the same size. From the protective deck up, with the exception of side armor, turrets, and battery, there was no value in the ship at all. She would have had to be rebuilt from the protective deck up. While her hull looked fairly in good order, yet it was all strained, and the beams being all gone it was held only by the tie plates, and wherever there was any wood at all, such as the filling around the torpedo openings, it was only charcoal and fell out, so that in the gale she had two inches thwartship vibration showing at the stump of the foremast. I therefore consider that above her protective deck, with the exceptions mentioned above, she was worse than valueless. The iron could not have been sold for the cost of removal.

Now as to the valuation, when raised, with the four 5.5″ guns on board, and not including the stores and outfit put on board by the Merritt and Chapman Derrick and Wrecking Company and the *Vulcan*, I estimate her value to be $700,000.

My experience in shipbuilding made me believe that in an American shipyard the *Infanta Maria Teresa*, battery and all complete, would be worth $2,000,000, and that she could be put in as good order as new for $1,300,000, leaving the value of the ship as raised, as above stated, $700,000, the valuable parts consisting of the hull below the protective deck, the turrets complete, the two 35-ton guns, the four 5.5″ guns, the two main engines, the main wrecking pump, and the pumps in the engine room, and the main boilers.

As to the condition of this machinery, the starboard main engine was in operation up to the abandonment. The port engine was in about as good order, with the exception of the reversing gear, which we broke. The boilers appeared to be in good condition. We had steam on nearly all of them at different times, and they developed no leaks. The main wrecking pump was thoroughly overhauled. The drainage of the ship was in fairly good order. The pumps in the engine room all were put in working order. I do not know what those engines could have been built for in the U. S., but I considered all her motive machinery worth 75 cents on the dollar of what it would cost new in the U. S.

Answering the third paragraph of your letter requesting names of officers and persons employed in raising the *Infanta Maria Teresa*, with their addresses, I suggest Captain John Chittenden, who is at present in the office of the Merritt and Chapman Derrick and Wrecking Company, 49 Wall street, New York, and who was in charge of the work for that company; Captain Colby M. Chester, U. S. N., and Captain C. F. Goodrich, U. S. N., who were each senior officers present while the work of making the temporary repairs was going on, and who visited the ship often and inspected my work. Rear-Admiral J. C. Watson also was well informed up to the time of his departure for California, but as he is not in easy access perhaps you may not need his report. Lieutenant W. M. Gilmer, who was executive officer of the *Vulcan*, also visited the ship a number of times and is a natural mechanic. Chief Engineer Gardiner Sims, who was the chief engineer of the *Vulcan* at that time, and is now superintending engineer of the army transport service here in New York, can also give you an opinion. The addresses of the naval officers you, of course, have at hand. Of the above I should put the highest value on the estimates of Captain Chittenden, as in his office they have to make estimates on the value of wrecks, and, perhaps, after him Mr. Sims is best qualified to judge of values; but my opinion was expressed a great many times while I was at work upon her, and I always considered $700,000 as what she was actually worth, or rather what the Government would save if we got her north.

Very respectfully,

IRA HARRIS,
Marine Superintendent.

Certificate to depositions for the United States.

STATE OF NEW YORK,
City and County of New York, ss:

I, Adeline Sessions, a notary public, duly appointed for the county of Kings, certificate filed in the county of New York, do hereby certify that

on the 26th and 27th days of September, in the year of our Lord one thousand nine hundred, I was attended by James H. Hayden, esq., of counsel for the libellant, and by Charles C. Binney, esq., of counsel for the United States, and by the witnesses, who were of sound mind and lawful age, and the witnesses were by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions made by them were reduced to writing by me from their statement, and they, after carefully reading the same, subscribed the same after having made the alterations indicated thereon.

And I do further certify that I am not of counsel nor attorney for either of the parties in the depositions and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand this 8th day of October, in the year of our Lord one thousand nine hundred.

ADELINE SESSIONS,
Notary Public,
Kings County, certificate filed in N. Y. Co.

O

In the Supreme Court of the District of Columbia.

No. 562, District Court. In Prize.

WILLIAM T. SAMPSON, REAR-ADMIRAL, UNITED STATES NAVY, ETC., LIBELLANT, v. THE SPANISH VESSEL OF WAR "INFANTA MARIA TERESA," ETC.

DEPOSITIONS AND OTHER EVIDENCE PRINTED UNDER STIPULATION OF THE PARTIES, FILED DECEMBER 17, 1900.

Part II.

INDEX.

	Page.
Reports submitted to the board of inspection and survey	99
Stipulation as to appraisal	109
Deposition of Capt. Henry C. Taylor, U. S. N. (for libellant)	110
Deposition of Commander Newton E. Mason, U. S. N. (for libellant)	115
Deposition of Commander Raymond P. Rodgers, U. S. N. (for libellant)	128
Deposition of Lieut. E. E. Capehart, U. S. N. (for libellant)	139
Deposition of Naval Constructor R. P. Hobson, U. S. N. (for libellant)	149
Contract of Merritt & Chapman Derrick and Wrecking Company with the United States, July 29, 1898	164

Reports submitted to the board of inspection and survey.

Bureau of Steam Engineering, Navy Department,
Washington, D. C., July 17, 1899.

Sir: 1. In reply to your letter of the 14th instant, requesting a list of property in possession of this Bureau received from the *Infanta Maria Teresa* and other Spanish vessels which were sunk and not subsequently recovered, in the vicinity of Santiago, you are informed that the following is a list of such property:

a. 1 launch engine from the *Colon*, value	$200.00
b. 1 launch engine from the *Teresa*, value	300.00
c. 1 launch boiler from the *Colon*, value	300.00
d. 1 launch boiler from the *Teresa*, value	30.00

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e.	1 launch boiler from the *Teresa*, locomotive type, value	$50.00
f.	1 length of shafting for launch, with three-bladed propeller keyed to it, value	75.00
g.	1 screw propeller from *Teresa*, diameter 8 ft. 6 inches, value	450.00
h.	1 hand deck pump from *Teresa*, value	50.00
i.	2 hydraulic drums from *Teresa*, 54 inches long, 15 inches diameter, value	30.00
k.	A part of 3-cylinder hand pump from *Teresa*, value	5.00
l.	One lot of bent and twisted brass and copper piping, etc., value	75.00

2. The above is the estimate put upon this material when received at the Norfolk yard in December last, and by authority of the Department the Bureau directed that the two-inch launch engine, with one launch boiler, one propeller, and one hand pump of the above, be put in thorough repair and prepared for shipment to the Naval Academy to be preserved as trophies; also the propeller shaft with propeller keyed to it. The other items were directed to be used for scrap metal at the navy-yard, Norfolk.

Very respectfully,

G. W. MELVILLE,
Engineer in Chief, U. S. N., Chief of Bureau.

Rear-Admiral FREDERICK RODGERS, U. S. N.,
President of Board Inspection and Survey, Navy Department.

WASHINGTON, D. C., *July, 17, 1899.*

SIR: 1. Referring to your letter of the 14th instant, requesting to be furnished with a list of property in the possession of the Bureau, recovered from the *Infanta Maria Teresa* and from other Spanish vessels which were sunk in the vicinity of Santiago and not subsequently recovered, together with appraised value and present location of the same.

The Bureau is in possession of the following articles of the above description:

Two bower anchors, value	$1,600
165 fms. 2½″ chain, value	6,000
One mercurial barometer, value	15
Total	7,615

3. The anchors are in the anchor park at the navy-yard, Norfolk. One was received from the *Maria Teresa* and one from the *Cristobal Colon.*

4. The chains are at the Boston Navy-Yard. They were recovered from the *Cristobal Colon.*

5. The barometer is at the Bureau. It was recovered from the *Cristobal Colon.*

Very respectfully,

R. B. BRADFORD,
Chief of Bureau.

PRESIDENT BOARD OF INSPECTION AND SURVEY,
Navy Department.

A. L. C.

SIR: In obedience to your order of July 19, 1899 (herewith appended), to prepare an accurate list of all ordnance material taken from Spanish

vessels captured in the vicinity of Santiago during the late war and landed at this yard, we have to report as follows:

[From *Alvarado.*]

SURVEY AND APPRAISAL.

Article.	Quantity surveyed (number).	Appraised or present value.		Condition.
		Each.	Amount.	
Gun, Maxim-Nord., 57 m/m., $5765.	1	.....	$1,100.00	1 serviceable.
Mount, Maxim-Nord., 57 m/m., $1923.	1	.....	1,000.00	1 serviceable.
Gun, Maxim-Nord., 37 m/m., $2071.	1	.....	2,000.00	1 serviceable.
Mount, Maxim-Nord., 37 m/m., $2071.	1	.....		1 serviceable.
Rifles, Mauser, cal. 7 m/m	1	.....	10.00	1 unserviceable in present form or in part. 1 no breechblock.
Rifles, Remington, cal. .45	15	$15.00	225.00	15 serviceable.
Belts and cartg. boxes, Mauser	3	2.00	6.00	3 serviceable.
	12	.25	3.00	12 unserviceable for Government use.
Cutlass and scabbards	2	.00	0.00	1 unserviceable for Government use.
Bayonets, Mauser	2			1 totally unserviceable.
Scabbards, Mauser	1	.10	.20	2 serviceable.
Box 57 m/m, No. 1 contg	1			1 serviceable.
Scar springs	4			1 serviceable.
Firing pins	6			4 serviceable.
Triggers	1			6 serviceable.
Filling-plug wrench	1			1 serviceable.
Firing-pin wrench	1	Priced with guns.	.....	1 serviceable.
Filling-plug lever	1			1 serviceable.
Brass drift	1			1 serviceable.
Hammers	1			1 serviceable.
Screws for shoulder piece	2			1 serviceable.
Box 57 m/m, No. 2, contg	1			2 serviceable.
Buffer wrench	2			1 serviceable.
Buffer spring	1	.....do.....	.....	2 serviceable.
Filling-plug screw	2			1 serviceable.
Box 37 m/m, contg	1			2 serviceable.
Breech plug, spare	1			1 serviceable.
Hammer	1			1 serviceable.
Steel drift	1			1 serviceable.
Firing-pin wrench	1	.....do.....	.....	1 serviceable.
Main scar spring	1			1 serviceable.
Trigger spring	1			1 serviceable.
Trigger-lever spring	1			1 serviceable.
Battle-nut wrench	1			1 serviceable.
Battle gland wrench	1			1 serviceable.
Spring box wrench	1	Priced with guns.	.....	1 serviceable.
Tompion	1		.....	1 serviceable.
Bristle sponge	1		.....	1 serviceable.
Belts, ammunition, 37 m/m	3	.....	.20	3 unserviceable for Government use.
Covers, breech, 57 m/m	1	.....	0.00	1 totally unserviceable.
Springs, recoil, 57 m/m	2	.50	1.00	2 serviceable.
Shells, common, 57 m/m	107	3.00	321.00	107 serviceable.
Shells, C. & P., 57 m/m	44	3.00	132.00	44 serviceable.
Shot, case (shrapnel) 57 m/m	34	2.00	68.00	34 serviceable.
Shells, common, 37 m/m	880	1.00	880.00	880 serviceable.
Shells, A. P., 37 m/m	395	1.00	395.00	395 serviceable.
Cartgs., rifle ball, cal. 45	1,600	.005	8.00	1,600 serviceable.
Cartgs., blank, cal. 45	950	.002	1.90	950 serviceable.
Cartgs., rifle ball, Mauser, 7 m/m	900	.01	9.00	900 serviceable.
Screens, rifle	2	.....	0.00	2 totally unserviceable.
Covers, gun	2	.....	0.00	2 totally unserviceable.
Sponge, bristle and staff, 57 m/m	1	Priced with gun.	.....	1 serviceable.
Total	.....	.....	6,160.30	
Delivered by U. S. S. "Potomac" (taken from "Cristobal Colon").				
Cartgs., 6-pdr. (fixed)	6	1.50	9.00	6 unserviceable in present form or in part.
Total	.....	.....	9.00	

SURVEY AND APPRAISAL—Continued.

Article.	Quantity surveyed (number).	Appraised or present value.		Condition.
		Each.	Amount.	
Received from navy-yard, Washington, D. C., as trophies, said to have been taken from "Maria Teresa."				
Gun, 14 c/m, #21	1	Incomplete...	$1,800.00	1 unserviceable for Government use.
Mount and shield	1		400.00	1 unserviceable for Government use.
Said to have been taken from "Vizcaya:"				
Gun 14 c/m #16	1	Incomplete...	2,000	1 unserviceable for Government use.
Mount and shield			500	1 unserviceable for Government use.
Total			4,700	

SUMMARY.

From *Alvarado*	$6,160.30
From *Potomac*	9.00
From navy-yard, Washington, D. C	4,700.00
Grand total	10,869.30

NAVY-YARD, *Portsmouth, N. H., July 22, 1899.*

Respectfully submitted.

J. V. B. BLEECKER, *Comdr., U. S. N.*
A. W. DUNBAR, *P. A. Surgeon, U. S. N.*
P. T. WARD, *Chf. Carpt., U. S. N.*

[First indorsement.]

NAVY-YARD, *Portsmouth, N. H., July 24, 1899.*

Approved and forwarded.

GEO. C. REMEY,
Rear-Admiral, U. S. N., Commandant.

U. S. NAVY-YARD,
Washington, D. C., July 25, 1899.

SIR: Referring to the letter of the Bureau of Ordnance of the 15th instant, #7173, hereunto attached, marked "A."

1. The board appointed to prepare a list of all ordnance material taken from Spanish vessel and landed at this yard respectfully submit the following list:

Gun, class of.	No.	Recovered from—	Condition.	Estimated value.	Delvd. at yard by—	Remarks.
14 c/m	10	Maria Teresa.	Good	$65,000	U. S. S. Leonidas	Breech plugs had been thrown overboard.
14 c/m	3	Oquendo	do	19,500	do	
14 c/m	10	Viscaya	do	65,000	do	
57 m/m Maxim-Nordenfelt.	1	Not known.	Bad	900	do	
Boat carriage	1	do	do	150	do	
Torpedoes	2	do	do	8,400	do	Schwartzkopff pattern; no war heads.

2. The estimated value of this material is based upon approximate cost, as its present intrinsic value is that of old metal. The guns of the *Maria Teresa* had no breech plugs, and the carriages and shields of all the guns were much damaged in wrecking.

3. In the estimated value of the guns is included that of the carriages and shields.

Very respectfully, your obedient servants,

HENRY MCCREA,
Lieut. Commander, U. S. N.
ALBERT GLEAVES,
Lieutenant, U. S. N.
JOHN J. WALSH,
Chief Gunner, U. S. N.

The COMMANDANT,
Washington Navy-Yard.

WASHINGTON, D. C., *October 5, 1899.*

SIR: Referring to your letter of the 30th ultimo, forwarding reports of the material obtained from the Spanish war vessels:

1. The Bureau recommends that the value of this material be based on the value of the metal only. The report from the New York Navy-Yard is the one which it is recommended to be followed in determining the value of the different guns, mounts, etc.

2. The reports are herewith returned.

Respectfully,

CHARLES O'NEIL,
Chief of Bureau of Ordnance.

PRESIDENT OF THE BOARD OF INSPECTION AND SURVEY,
Washington, D. C.

ENDORSEMENT OF BOARD.

[Endorsement 1st.]

BOARD OF INSPECTION AND SURVEY,
Washington, D. C.

In accordance with the recommendation of the Chief of the Bureau of Ordnance, the value of the ordnance material taken from Spanish war vessels appraised at the Washington Navy-Yard has been reappraised on the basis of the market value of old material, and its value has been fixed at $975.30/100.

FREDK. RODGERS,
Rear-Admiral, U. S. N., President of Board.

List of ordnance material received from the wrecked Spanish ships and delivered to this yard by the steamer Senior.

STORED IN BUILDING # 18.

Articles.	Condition when delivered.	Vessel from which taken.	Estimated value.
3 14 c/m gun, with carriages and shields	Damaged by heat and rust.	Almirante Oquendo.	$680.00
2 57 m/m Maxim-Nordenfelt guns	do	do	30.00
3 57 m/m Maxim-Nordenfelt guns, with recoil mounts.	do	Maria Teresa	70.00
5 57 m/m Armstrong guns	do	do	75.00
3 37 m/m Armstrong guns	do	Unknown	9.00
3 37 m/m revolving cannon	do	Maria Teresa	15.00
2 57 m/m recoil mounts, Maxim-Nordenfelt	Damaged; parts gone.	do	14.00
2 57 m/m pedestal mounts	Damaged	do	30.00
2 57 m/m plug levers, Max.-Nord	do	do	.10
2 57 m/m breech blocks, Max.-Nord	do	do	1.00
2 57 m/m shell guides, Max.-Nord	do	do	.50
2 57 m/m shoulder bars, Maxim-Nordenfelt	do	do	1.00
2 57 m/m recoil mounts, Armstrong	Damaged	Unknown	22.00
2 57 m/m saddles, Armstrong	do	do	7.00
5 57 m/m shields	do	do	15.00
3 37 m/m revolving cannon, with cone mounts	do	do	15.00
2 shelf mounts	do	do	8.00
4 37 m/m cone mounts, with saddles	do	do	16.00
5 37 m/m shields	do	do	2.50
1 37 m/m saddle	do	do	1.50
4 57 m/m cage stands	do	"Maria Teresa"	40.00
2 57 m/m swinging mounts	do	Unknown	36.00
1 breech plug (old style)	do	do	1.00
2 torpedoes	do	"Maria Teresa"	60.00
2 torpedo tubes	do	do	24.00
3 torpedo tubes, connections	do	do	6.00
4 pieces fittings, ball joint of torpedo tube	do	do	12.00
2 57 m/m accessory boxes			.00
115 powder tanks	Damaged	"Maria Teresa"	115.00
1 lot valves, piping, and bolts	do	do	1.00
2 mounts for machine guns	do	Unknown	2.00

STORED AT ST. JULIEN'S MAGAZINE.

93 powder tanks, "full"	Damaged	"Maria Teresa"	93.00
48 shell, 11-inch. A. P	do	Unknown	86.00
282 cartridges, 14 c/m	do	"Maria Teresa"	133.00
69 shell, 11-inch, common	do	Unknown	69.00
201 cartridges, 57 m/m	do	"Maria Teresa"	16.00
32 chests, 57 m/m	do	do	.00
10 chests, 37 m/m	do	do	.00
7 boxes small-arm amunition	do	do	.00

List of ordnance material taken from the "Maria Teresa" and delivered at this yard by the "Vulcan" on her return from Cat Island.

2 57 m/m Maxim-Nordenfelt guns	Damaged by heat and rust.	"Maria Teresa"	30.00
2 57 m/m recoil mounts	do	do	30.00
2 57 m/m pedestals with recoil mounts	do	do	48.00
1 37 m/m cone mount	do	do	4.00

WM. A. CABLE,
Gunner, U. S. N.
F. L. APPLEGATE,
Gunner, U. S. N.

[First indorsement.]

NAVY-YARD,
Norfolk, Va., July 28, 1899.

Respectfully forwarded for the information of the Bureau of Ordnance.

N. H. FARQUHAR,
Rear-Admiral, Commandant.

WASHINGTON, D. C., *Aug. 4, 1899.*

SIR: 1. Referring to your letter of the 14th ultimo, requesting a report of any property in the possession of this Bureau saved from the *Infanta Maria Teresa* or other Spanish vessels sunk in the vicinity of Santiago and not subsequently recovered, and, if any, to furnish an estimate of the value thereof, for the information of the board of inspection and survey in connection with an appraisal of the vessel named, you are informed that the only property saved, under the cognizance of this Bureau, consists of two 18″ treble blocks, iron frames, from the *Infanta Maria Teresa*, valued at $25 each.

2. These blocks were landed at the navy-yard, Norfolk, and have been loaned to the superintendent constructor at the Newport News Shipbuilding and Dry Dock Co., Newport News, Va., for testing the cranes of the *Kearsarge* and *Kentucky*.

Very respectfully,

DARIUS A. GREEN,
Acting Chief of Bureau.

The PRESIDENT OF BOARD OF INSPECTION AND SURVEY,
Navy Department.

NAVY-YARD,
New York, July 20, 1899.

GENTLEMEN: 1. In accordance with instructions received from the Bureau of Ordnance, you are hereby constituted a board to prepare a list of all ordnance material taken from Spanish vessels captured in the vicinity of Santiago during the late war and landed at this yard, together with an estimate of the value of such material at the time it was landed.

2. This list should show from which Spanish vessel each article was taken, by whom it was delivered at the yard, and its condition at the time of such delivery.

Very respectfully,

J. W. PHILIP,
Rear-Admiral, U. S. Navy, Commandant Navy-Yard and Station.

Commander WM. SWIFT, *U. S. N.*
Asst. Paymaster V. S. JACKSON, *U. S. N.*
Gunner M. W. GILMARTIN, *U. S. N.*

NAVY-YARD,
New York, August 19, 1899.

SIR: 1. In obedience to your order of July 20, 1899, No. 3323, the board has made a careful inventory of the material covered by your order. As there are in the ordnance department a considerable quantity of other stores received from the Philippine Islands, and from other places on the shore not strictly covered by the order, the board has deemed it judicious to include them in this inventory and appraisal, and thus avoid the expense of the repeated handling and overhauling of the same things at a later date.

2. The lists cover all material received at the yard, including such things as have been loaned to various societies and persons by Department

order. No appraised value of many of these articles can be assigned, because the information in regard to them is so meager; and where no data are given it is because of the board's inability to obtain them.

3. The appraised values used are such as the board believes would be obtained for the articles if sold as scrap metal or as material having no sentimental value, but as many of these articles have a very interesting history and associations it is to be expected that a sale of them would bring very much higher prices than those assigned by the board.

Respectfully,

WM. SWIFT,
Commander, U. S. N.
VICTOR S. JACKSON,
Asst. Paymaster, U. S. N.
M. W. GILMARTIN,
Gunner, U. S. N.

The COMMANDANT, *Navy-Yard, New York.*

Spanish ordnance received from the Antilles.

RECEIVED SEPT. 3, 1899, FROM U. S. S. HARVARD, TAKEN FROM ALMIRANTE OQUENDO.

	Appraised value.			
	Material.	Wgt. (lbs.)	Unit price.	Total cost.
1 37 m/m H. R. cannon, # 3201, 206 K., 1892. (Gun in very badly damaged condition; all movable parts missing or broken.)	Brass ...	150	8¢	$12.00
1 37 m/m saddle, #3201. (Cap square and bolts missing; also clamp.)	Steel ...	300	½¢	.75
1 37 m/m cone stand, #3201. (Clamp missing and stand in very poor condition.)	Brass ...	60	8¢	4.80
(All the above pieces of ordnance material very rusty and pitted from salt water. Building No. 13.)	Brass ...	40	8¢	3.20
	Steel ...	80	½¢	.20

RECEIVED FROM WASHINGTON NAVY-YARD FEB. 9/99, GUN AND MOUNT # 3, FROM VISCAYA; GUN AND MOUNT # 29, FROM ALMIRANTE OQUENDO.

1 14 C. M. gun # 3, Artilleros del Nervion Bilbao, 1893, G. H. 4262, K. O. (Parts of breech mechanism and sights gone.)	Steel ...	9,000	½¢	$22.50
1 14 C. M. gun # 29, Artilleros del Nervion Bilbao, 1894, G. H. 4313, K. G. (Parts of breech mechanism and sights gone.)	Steel ...	9,000	½¢	22.50
1 14 C. M. mount # 3; no marks. (Training wheel shot in half and parts of training and elevating gear missing.)	Steel ...	5,000	½¢	12.50
1 14 C. M. mount # 29; no marks. (No training or elevated gear)..	Steel ...	5,000	½¢	12.50
2 14 C. M. stands; no marks. (Nos. 3 and 29, bolts and nuts gone).	Steel ...	2,000	½¢	5.00
2 14 C. M. shields, # 3 and 29. (Shield # 3 has a 5" hole in it. These guns and mounts are trophies captured at Santiago de Cuba, July 3/98, by the fleet under Rear-Admiral W. T. Sampson, from the Spanish squadron.)	Steel ...	4,000	1/4¢	10.00
The foregoing guns and mounts are mounted in front of commander's office, navy-yard, New York.				
5 Spanish contact mines; no marks; condition very bad; plungers and strikers anchors and 2 anchor ropes missing; mines so badly corroded that holes are eaten in them in places. Explosive cylinders sent to Fort Lafayette and from there shipped to Newport, R. I.	Steel ...	2,000	1/4¢	5.00
(Mines were received from U. S. S. Panther, July 5/98, and are now on ordnance dock, navy-yard, New York).				

[NOTE.—The balance of this appraisement relates to property brought from the Philippines or taken from Spanish vessels other than those engaged in the battle off Santiago, and is therefore omitted from this copy.]

U. S. NAVY-YARD,
Washington, D. C., September 12, 1899.

SIR: The board appointed by your order of September 6, 1899, upon the request of Rear-Admiral Frederick Rodgers, president of the Board of Inspection and Survey, to appraise various articles recovered from the vessels of the Spanish squadron sunk July 3, 1898, which were shipped by the U. S. S. *New York* to the Bureau of Navigation and are now in store #10 at this yard, has the honor to submit the following list of these articles, viz:

3 5.5″ breech plugs from the *Maria Teresa*,
1 training gear,
1 gun-carriage pump,
1 gun sponge,
1 extension rammer,
1 electric switch board,
1 galvanometer for testing mine circuits,
1 oil lantern for covered deck,
1 dry compass (Sir William Thompson's), bowl and card only,
1 chronometer (apparently ruined by salt water),
3 heliograph outfits (incomplete),

And to report that it finds these articles of a type unsuitable for Government use, incomplete in parts, in a more or less damaged condition, and practically valuable only as steel or brass scrap, and estimates the total value of the lot at $50.00.

Very respectfully,

C. R. ROELKER,
Commander, U. S. Navy.
JOHN ROBINSON,
Lieut. Com'd'r., U. S. Navy.
G. D. JOHNSTONE,
Gunner, U. S. Navy.

To the COMMANDANT,
For President of Board of Inspection and Survey.

U. S. NAVY-YARD,
Norfolk, Va., September 9, 1899.

SIR: Referring to your letter of the 5th of September, 1899, asking for an appraisal on wine turned in from the *Maria Teresa* and iron safe from the *Colon*, I have the honor to enclose herewith report of survey and appraisal on the same.

It will be noted that the wine was appraised sometime since, and is now advertised for sale in schedule of condemned articles to be sold at auction at this navy-yard, September 26th.

Very respectfully,

C. H. ROCKWELL,
Captain Commanding.

Rear-Admiral FRED. RODGERS, U. S. N.,
President Board of Inspection and Survey,
Navy Department, Washington, D. C.

Survey and appraisal.

Class.	Article.	Location.	Quantity.		Original cost, or invoice price.		Quantity surveyed.		Appraised or present value.		Condition.		Disposition recommended (to be sold).
			Unit.	Total.	Each.	Amount.	Unit.	Number.	Each.	Amount.	Unserviceable in present form or in part.	Unserviceable for Government use.	
32	Iron safe from "Colon."	#14	No....	1	Not on charge		No....	1	$2.00	$2.00	Yes.	Yes.	Yes.
24	Wine.....	#14	Casks.	30	Not on charge		Casks.	31, about 18 gals. each.	$2	62	Yes.	.....	Yes.

Copy of Req. #71, dated April 1, 1899, approved April 8.

In accordance with the approved survey (Req. #71) this wine has been included in Acct. D, and is advertised for sale in schedule of condemned stores, to be sold Sept. 26th, 1899, as Lot #17.

Respectfully submitted.

R. E. IMPEY, *Comd'r, U. S. N.*
WALTER L. WILSON, *P. A. Paym., U. S. N.*
JOHN S. DODDRIDGE, *Lieut., U. S. N.*

NAVY-YARD, *Norfolk, Va., Sept. 9, 1899.*

ANNAPOLIS, MARYLAND, *September 13, 1899.*

SIR: In accordance with your request of the 5th instant, I have called a board to appraise the flags at the Naval Academy, captured during the Spanish war, and have the honor to enclose herewith the report of the board.

Very respectfully,

F. V. MCNAIR,
Rear-Admiral, Superintendent.

Rear-Admiral FREDERICK RODGERS, U. S. N.,
President of the Board of Inspection and Survey,
Navy Department, Washington, D. C.

UNITED STATES NAVAL ACADEMY,
Annapolis, Maryland, September 12, 1899.

SIR: In obedience to your order of September 6, 1899, we have the honor to submit the following appraisal of the flags named in the list accompanying the order:

	Appraised value.
1. 1 ensign from the *Cristobal Colon*, good, but slightly soiled. (Length, 15 feet 6 inches; width, 13 feet 8 inches).....	$12.00
2. 1 ensign from the *Cristobal Colon*, coat of arms cut out, very soiled and faded. (Length, 26 feet 9 inches; width, 21 feet, J. E. Pillsbury).....	1.00
3. 1 ensign from the *Cristobal Colon*, slightly soiled, one small hole and one small patch. (Length, 19 feet; width, 13 feet 6 inches).....	15.00

	Appraised value
4. 1 ensign from the Spanish torpedo boat destroyer *Furor*. Slightly worn at end. (Length, 9 feet 3 inches; width, 5 feet 3 inches)	$6.00
5. 1 rear-admiral's flag, captured by the U. S. S. *Oregon* from the Spanish cruiser *Cristobal Colon*. (Length, 7 feet 8 inches; width, 8 feet)	8.00

Very respectfully,

E. J. DORN,
Lieutenant-Commander, U. S. N.
EDGAR T. WARBURTON,
Lieutenant-Commander, U. S. N.
RAYMOND STONE,
Lieutenant, U. S. N.

The SUPERINTENDENT,
U. S. Naval Academy.

Stipulation.

It is hereby stipulated and agreed, by and between the counsel representing the original libelant in this case, the various parties who have appeared therein by intervening petitions, and the United States, respectively, that the appraisal made by the Board of Inspection and Survey of the Navy Department on October 10, 1899, of the property recovered from Spanish vessels engaged in the battle off Santiago was made up as follows:

ORDNANCE.

At Portsmouth, N. H., Navy-Yard	$10,869.30
At Washington, D. C., Navy-Yard	975.30
At Norfolk, Va., Navy-Yard	1,818.60
At New York Navy-Yard	110.95
Total ordnance	13,774.15

OTHER PROPERTY.

In possession of—	
Bureau of Steam Engineering	$1,565.00
Bureau of Equipment	7,615.00
Bureau of Construction and Repair	50.00
At Washington, D. C., Navy-Yard	50.00
At the United States Naval Academy	48.00
At the Norfolk, Va., Navy-Yard	64.00
Total	23,166.15

The balance of the sum ($29,367.00) reported by the board of inspection and survey as the value of property recovered from Spanish vessels, viz, the sum of $6,200.85, represents the board's appraisal of other property taken from Spanish vessels or forts, which property was inadvertently included by the board among the property taken from the vessels engaged off Santiago. Although the recapitulation of appraisals in the board's report contains these words, "Value of recovered property from Spanish vessels not raised, $29,367.00," the said appraisal included

property to the amount of $5,204.60 recovered from the *Infanta Maria Teresa.*

McCammon and Hayden,
Proctors for Libellant.
Charles C. Binney,
Special Attorney for United States.
George A. and William B. King,
Proctors for certain other Officers and Enlisted Men.
William E. Harvey,
Proctor for the Officers and Men of the U. S. Auxiliary Cruisers Harvard, Resolute, and Fern.
Hopkins and Hopkins,
Proctors for the Officers and Men of the U. S. Auxiliary Cruiser Fern.

Deposition of Capt. Henry C. Taylor, U. S. N., for libellant.

Henry C. Taylor, being duly sworn and examined as a witness for he libellant, testifies:

By Mr. William B. King:

1. Question. What is your name, age, and occupation?
Answer. Henry C. Taylor; 55 years and 10 months; a naval officer.
2. Question. What is your rank in the Navy?
Answer. Captain.
3. Question. Upon what duty were you engaged in the summer of 1898, particularly in June and July?
Answer. In command of the battle ship *Indiana.*
4. Question. And as such commander you took part in the engagement off Santiago July 3d?
Answer. I did.
5. Question. What became of the Spanish vessel the *Infanta Maria Teresa* in that engagement?
Answer. She was injured and set on fire by the projectiles from our battle ships, and was by her crew and officers run ashore at a point several miles west of the Santiago entrance.
6. Question. Will you please state how far distant you were from the *Infanta Maria Teresa* at any time after her going ashore on the day of the battle?
Answer. I was 2 miles away when she struck the beach. I then passed her, going along the coast engaging the other ships, the *Vizcaya* among them, and passed her; the distance I estimate somewhere between 1 mile and a mile and a half, to the best of my knowledge and belief.
7. Question. Did you on that day, or thereafter, go aboard the *Infanta Maria Teresa?*
Answer. I did not, but I sent two parties upon her a day or two days afterwards, who were to examine and make a report to me—a party of my officers.
8. Question. Have you examined the report of the board appointed by the commander in chief of the United States naval forces, North

Atlantic Station, to report upon the condition of the Spanish vessels after the battle of July 3, 1898, as contained on pages 573 to 592 of the Appendix to the Report of the Bureau of Navigation for 1898?

Answer. I have read it, but so long ago it is not fresh in my memory.

9. Question. Please state whether in your duties as a naval officer you have had occasion to estimate as to the values of naval vessels.

Answer. Yes; at different times I have.

10. Question. Can you state some particular duty rendered by you in that relation?

Answer. In the fall of 1898 I was a member of a board which was to examine, and did examine, about seventy ships that had been used for war purposes and which the Government directed us to examine, inspect, and appraise for the purpose of reporting which of them should be kept in the service, the war being over. I have had on many other occasions to appraise and value vessels which I can not now recall—various boards that I have been on for fifteen or twenty years past, notably a board of inspection sixteen or seventeen years ago. I claim no special experience more than other officers—no special experience in that line.

11. Question. State whether such experience would ordinarily fall to officers of the Navy of your rank and years of service.

Answer. Such experience is similar to that of other officers, with the exception of the first I have mentioned, of the fall of 1898, which was exceptional in its experience.

12. Question. Please state whether you have ever had duty requiring the inspection of the construction or equipment of vessels.

Answer. Of the equipment of vessels I have often had the duty of inspection. Of the construction of vessels, only so far as inspection of reported defects in water-tight bulkheads, coal bunkers, and similar details of the construction of ships.

13. Question. I will now ask you to look at the portion of the report of the board on condition of Spanish vessels already referred to, which relates to the *Infanta Maria Teresa*, beginning on page 574 and ending on page 578 in the volume cited.

Answer. I have glanced over this and have dealt only upon the conclusion, as the details, of course, will be—I received no report, and have no personal knowledge of the smaller details of the matter.

14. Question. Basing your answer upon your knowledge of the *Infanta Maria Teresa* as derived from your official duty and prior to her taking part in the battle, and as to her condition after the battle from the statements made in the report which you have just read, I would ask you to make an estimate, as well as you can, of the value of the vessel in the condition disclosed by the report of the board.

Answer. When she lay on the beach?

15. Question. As she lay upon the beach.

Answer. Shall I go into some length?

16. Question. Yes.

Answer. I knew the *Maria Teresa* first the year before the war in New York Harbor at, I think, the ceremonies inaugurating Grant's tomb. I laid near her and was on my ship, the *Indiana*, and was on board of her. She was in apparently good condition in every respect. I next saw her in battle, and her steaming powers and the way in which

she used her battery all indicated her to be still in good condition in the elemental—fundamental parts of a man-of-war. I next saw her lying upon the beach, and upon the 5th of July, I think, I signaled early in the morning for permission to go from off Santiago 2 or 3 miles to near her and permit my officers to examine her. This was, I think, the day before the board which was sent. I believe it to have been July 5, two days after the battle. Permission was granted, and I spent the day with my ship lying quite close, from a quarter to a half a mile from her, while I sent two parties of officers and men, one during the forenoon, and upon its return another to spend the afternoon. They visited the *Teresa* and the *Oquendo*. Their reports to me were informal and for my information only. They caused me to believe that the damage to her was not of great amount and that she could be floated without great effort or expense. In making an estimate for my own satisfaction at any time since, I think I have been more or less influenced by this report (which went more into details) of this board of officers, and I have in my estimate raised thereby a little the cost of repairing her. Permit me to figure for a minute?

17. Question. Certainly.

Answer. You asked the resultant value of the ship if floated as she seemed—what she would be worth after the expense of floating her. That is an element which I would like to have considered in the calculations. I judged her value before any damage was done her at $3,000,000, basing that upon the cost of other armored cruisers that I knew, and allowed for some wear and tear causing a reduction in the value. I have made three different estimates. Is it desirable I should state these under the different conditions?

18. Question. Any estimates which you have made that would throw light on the valuation is desired.

Answer. The first estimate was made that it would cost $150,000 to float her and $350,000 to put her in some shape in which she could steam some and fight some. This made a net valuation for the ship at $2,500,000. My next estimate was $250,000 to float her and $500,000 to repair her, which I estimated would put her in very fair condition for steaming or fighting. This made her value $2,250,000. I finally reduced this valuation from various causes, additional reports, further difficulties in floating her, until I gave her a net valuation as she lay there of $1,800,000. That was my final estimate and that I should prefer to hold to, although I believe that she could have been put in condition to do some good work for the other sums I have mentioned.

By Mr. JAMES H. HAYDEN:

19. Question. How long did you remain near the *Teresa* after July 5?

Answer. About two weeks.

20. Question. Do you know what, if anything, was done with a view to preserving her, as she lay on the beach, against further damage from the sea or elements?

Answer. I know of nothing, but it does not show that there was nothing done.

21. Question. It might have been done without your knowing it?

Answer. It might have been done without my knowledge.

22. Question. What, if anything, was in your opinion necessary to be done to preserve her as she lay on the beach?

Answer. I know of nothing except to proceed with preparations to float her. The weather was very quiet. Lying as she was she suffered the usual amount of beating from a moderate surf, not sufficient, I think, to injure her structurally.

23. Question. From the time you obtained your first information, your first detailed information with regard to her condition, did you entertain any doubt as to whether or not she was a salvable ship?

Answer. Never. On the contrary, I knew that she could be easily saved and floated; about that there could be no question. She was perfectly easily saved. I entertained no doubt whatever at any time of this.

24. Question. Do you know how soon operations were commenced with a view to floating her off the beach?

Answer. I do not remember the time.

By Mr. WILLIAM B. KING:

25. Question. Will you please state what your present duties are in Washington?

Answer. I am a member of a board of construction ordered to determine the armament of certain new battle ships that are being planned, and a member of a board known as the general board to consider plans known as general staff plans.

26. Question. That is the board of which Admiral Dewey is chairman?

Answer. Of which Admiral Dewey is president.

Cross-examination by Mr. CHARLES C. BINNEY:

27. Question. You have stated that you estimated the value of the *Teresa* before she went into action on July 3 as $3,000,000. Have you any information as to the actual cost of the vessel and her equipment?

Answer. I have not, sir. I based it upon the cost of other ships which I knew of as to the hull and engines, and I made an estimate of what additions, as guns and mounts and equipments, would cost. Shall I give you the items?

28. Question. I was going to ask for the items.

Answer. Roughly, $2,000,000 for her hull and her engines, and $1,000,000 for her armor, armament, and equipment.

29. Question. Can you further subdivide these costs or figures?

Answer. No, sir; I could not with my present knowledge, without seeking further.

30. Question. How many years did you understand the *Teresa* to be in service?

Answer. I do not now remember, but that she was a modern ship, and I regarded her among their modern ships. I allowed for wear and tear something over two or three years, not over five or six, and these figures, my impression is, are probably not far from correct.

31. Question. What proportion did the amount which you allowed for wear and tear bear to your gross valuation of $3,000,000?

Answer. That question leads me in making these figures to show that I have failed to put in an item. If you will permit me I should like to correct in my evidence a statement. I perceive I have not allowed for the wear and tear of which I spoke, and that the $3,000,000 which I

estimated at first should have subtracted from it $300,000, being roughly 2 per cent a year for five years. These are figures that I stated before, and I had them correct, I thought, but, as I have told you, from my former figures I would now ask that $300,000 be deducted. It makes the sum I have given before $300,000 less.

32. Question. You have stated that you made three estimates of the value of the *Teresa* before she was floated. Do I understand that you regard the final estimate, which is now, I believe, $1,500,000, as the one on which you wish to stand?

Answer. I made three estimates. Those corrected would be $2,200,000, $1,950,000, and $1,500,000. Is it desirable that I should stand on one? I have mentioned what these three were. They were—the first would float the ship and enable it to move about and perhaps fire her guns.

33. Question. Are you able to make any of your three estimates more detailed than you have made them?

Answer. No, sir; I have based these estimates upon those of other vessels and reports which I have seen. More details than this would need a naval constructor—expert knowledge.

34. Question. In estimating the value of the seventy vessels that you have spoken of in the autumn of 1898 did you consider details?

Answer. We considered as a board the details. There was expert knowledge in the board. Engineers and constructors were associated with the board and gave the board the necessary technical details.

35. Question. Then the valuations which you put on those vessels were largely based upon the expert knowledge of others, were they not?

Answer. Largely based on that.

36. Question. Have you formed any opinion as to the effect of the fire on the *Teresa* in increasing the difficulties of removing the damaged superstructure from the uninjured portions below it without injury to the latter?

Answer. I have discussed that with other officers and have, in so far as that goes, considered it.

37. Question. Do you consider that the effect of the fire made it any more difficult to remove the damaged portion without injury to the uninjured portion than it would have been if there had been no fire?

Answer. I see no reason why it should have made any greater difficulty.

38. Question. What do you consider would have been the relative cost of removing the damaged metal parts of the *Teresa* without injury to the uninjured portion and the value of the metal removed as scrap?

Answer. The value of the metal removed as scrap would have been much impaired probably by the fire—from being exposed to fire. The relative cost of the work in removing the injured, burnt, metal parts would not, in my opinion, have been greater than if they had not been burnt.

39. Question. Have you had any personal experience in regard to such work?

Answer. I have not.

40. Question. Such knowledge as you have of the condition of the *Teresa*, upon which you have based your estimates, does not include any information as to her condition gained after the vessel was floated, does it?

Answer. No; but it does include information gained of her condition (before she was floated) by a board whose views affected my estimates.

41. Question. In making your estimates what have you assumed to be the condition of the bed plates of the turrets?

Answer. I have not taken that detail into consideration. My estimate was only general.

42. Question. Have you considered the question of whether the turrets would have to be removed or not?

Answer. I have; and believed that they would not have to be removed.

Upon being recalled for further cross-examination by Mr. Binney for explanation of his answer to question No. 38, the witness says:

43. Question. My question seems to have been awkwardly expressed. I mean, what do you consider would have been the proportion between the cost of removing the damaged metal parts of the *Teresa* without injury to the uninjured portions and the value of the metal so removed as scrap?

Answer. This is a question which can be answered satisfactorily only by a constructor or repairer of ships. I do not know what the proportion would be.

By the NOTARY:

Question. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. Nothing occurs to me now.

H. C. TAYLOR.

Subscribed and sworn to before me this 7th day of February, 1901.

[SEAL.] MARTHA M. BECK,
Notary Public.

Deposition of Commander Newton E. Mason, U. S. N., for libelant.

Met at Newport, R. I., February 16, 1901, pursuant to an agreement of counsel.

Present: James H. Hayden, esq., of counsel for the libelant; Charles C. Binney, esq., special attorney for the United States, and Max Levy, esq., commissioner.

NEWTON E. MASON, a witness produced on behalf of the libellant, having been duly sworn, deposed and said in answer to interrogatories propounded to him as follows:

Direct examination by Mr. HAYDEN:

1. Question. Please state your name and rank.

Answer. Newton E. Mason, commander, United States Navy.

2. Question. Upon what duty were you engaged on or about the 3d of July, 1898?

Answer. I was executive officer of the U. S. S. *Brooklyn*, flying the broad pennant of Commodore W. S. Schley.

3. Question. You were on duty throughout the engagement between the United States naval force off Santiago and the Spanish fleet under Admiral Cervera which took place on July 3?

Answer. I was.

4. Question. What was the result of that engagement so far as the Spanish vessel of war *Infanta Maria Teresa* was concerned?

Answer. She was driven ashore at a point about 5 miles west of the Morro Castle at Santiago, and her upper works were practically destroyed by fire.

5. Question. Did she surrender?

Answer. As far as I know, she did; that is, her flag was hauled down, although I did not see it come down.

6. Question. You are the Newton E. Mason who was a member of a board appointed on July 6, 1898, to inspect the *Infanta Maria Teresa* and other Spanish vessels which were engaged in the battle off Santiago?

Answer. I was.

7. Question. When did you first see the *Infanta Maria Teresa* after the close of the engagement?

Answer. This board of which I was a member first made a short visit to the *Maria Teresa* on the morning of July 7, 1898; then proceeded to make an inspection of the *Colon*, and on July 9, 1898, we returned to the *Maria Teresa* and we remained on board of her one whole morning—the whole forenoon, it was.

8. Question. What was the condition of the *Maria Teresa* when you made your first inspection of her?

Answer. The *Maria Teresa* was lying about 100 yards from the beach, in a small cove about 5 miles west of the Morro Castle of Santiago, and was grounded for the greater part of her length; she lay in a very good position with deep water astern to facilitate pulling her off; she was fairly well protected against an eastern sea; her structural stability was not injured to any considerable degree, barring local distortion caused by fire. The hull proper was practically intact; the outside skin was reported by divers that were sent down at the time as intact, so far as large holes were concerned—of course there were punctures by shell fire. This examination by the divers extended only to the bilges fore and aft, except at the extremities, where they got entirely to the bottom. I understand that it was afterwards reported that there were one or two holes in the outer skin forward where she had settled on rocks. The lower portion of the vessel up to the protective deck was filled with water, which came in and flowed out through the stern and torpedo tubes. The bottom on which she grounded was firm coral sand, shelving gently away from the beach. The inside of the vessel above the protective deck was practically destroyed; the bulkheads being principally of wood were burned out entirely, the middle ones being warped badly, and the deck beams were badly warped by heat and in cases where they supported weights they were very much deformed. The bilges and all the equipments were entirely destroyed. The outside plating and armor was in excellent condition, but all deck plating above the protective deck was more or less warped and injured by heat. The engines were covered with water within 6 inches of top of cylinders and an examination of them was not made. I am able to give this testimony because I was a member of the

board of eight officers before referred to appointed by Rear-Admiral Sampson, U. S. Navy, the commander in chief, on July 6, 1898, to make a thorough examination of the wrecked Spanish vessels and report on the effect on them of gun fire, of combustible material and explosives, and also to consider the possibility and feasibility of raising and saving any of them. This board of which I was a member made a short visit to the *Maria Teresa* on July 7, 1898, and on July 8, 1898, we continued the examination of this vessel during the whole forenoon.

9. Question. Does the diagram contained in Volume II of the Report of the Secretary of the Navy for 1898, on the page immediately following page 571, indicate the position of the *Maria Teresa* as she lay on the beach after the engagement?

Answer. It does. This diagram is a portion of the report of the board of which I was a member.

10. Question. Do the eight photographs on the pages succeeding the diagram fairly indicate the appearance of the *Maria Teresa* as she lay on the beach after the engagement?

Answer. They do. They give a very fair indication of her appearance.

11. Question. Was the *Maria Teresa*, when you visited her on July 7, a salvable ship?

Answer. I should say that she was decidedly so. She was floated, towed to Guantanamo, and afterwards started north, and abandoned during a gale on her way north.

12. Question. Did any of the officers who composed your board regard the *Maria Teresa* otherwise than a salvable ship?

Answer. The report of the board of which I was a member was unanimous, as far as I can recall.

13. Question. You refer to the report of the board appearing on pages 573 to 592 of Volume II of the Report of the Secretary of the Navy for 1898?

Answer. I do. And I am quite sure that the conclusions of the board concerning the *Teresa* were unanimous.

14. Question. Was the *Teresa* treated as a salvable ship from and after July 3; if so, what was done in the direction of preserving and saving her?

Answer. She was so treated, so far as I know. The board of which I was a member recommended that she be immediately secured by cables so that she couldn't be moved from her present position; I do not know, of my own knowledge, that this was done, but I have heard that it was.

15. Question. Were such measures sufficient for the preservation of the ship from further injury?

Answer. If they were taken, yes, because she was afterwards floated all right.

16. Question. Could the naval force present at Santiago, with the means there at hand, have done anything more prior to the time that the Navy Department took charge of the *Maria Teresa* and placed her in the hands of the contractors?

Answer. No, I think not. There were no proper wrecking facilities near at hand, nearer than northern ports of the United States. I think the naval force on the spot did everything in its power.

17. Question. Did the board of which you were a member, and did

you, as a member of the board, examine the *Teresa* and ascertain thoroughly her condition prior to the making of the report on July 13, 1898?

Answer. We did. We made, as I have said, two visits, a short one on July 7, and spent the whole forenoon of the 9th of July inspecting the vessel, and the board visited every part of her that it was possible to visit.

18. Question. From your knowledge thus attained of the *Teresa's* condition, what in your opinion were the values of the various parts of her as she lay on the beach west of Santiago, namely, her under-water body, her protective deck, her guns and turrets, her engines and boilers, her equipment, and her superstructure?

Answer. I don't wish to pose as an expert in any way, and the answers I give must not be considered as those of an expert naval constructor, but as those of a naval officer who has had to do with ships, especially men-of-war, nearly all his life. The following are my estimates of the value of the various parts of the *Teresa* as she lay on the beach: Under-water body, protective deck, and armor—about 1,000 tons of the latter—were worth $600,000; the propelling machinery, $325,000; two 12-inch guns and mounts in turrets, $75,000; making a total of about $1,000,000. The whole inside of the vessel above the protective deck, the superstructure, and all the equipment were practically valueless, and the remaining guns were not of much use and are not counted in the above.

19. Question. The *Teresa* had a number of 5.5 guns?

Answer. She had eight.

20. Question. What was their condition when you observed them on July 7?

Answer. Some of them were with the breech-blocks gone; all except two had their breech-blocks gone. The shields of some of them were badly damaged. I suppose, with cleaning and overhauling and a good deal of repair, these guns could have been put in condition, but I didn't consider them in the valuation of the ship, as I would never have recommended putting them back on her, as an ordnance officer.

21. Question. In your opinion, could they have been sold in the general market or to a foreign Government? If so, for what sum?

Answer. Yes; they could, probably, and, possibly, with their mounts, would, have brought $2,000 each—$16,000.

22. Question. What was the condition of the *Teresa's* auxiliary engines for pumping and other purposes?

Answer. Those above the protective deck were destroyed entirely; they were practically of no use, having been destroyed by fire. As I stated before, the board made no examination of the lower deck, on account of the water in the hold. Diving was impracticable and dangerous—dangerous because the air pipes might have been cut on the ship's plating.

23. Question. From your knowledge of vessels, and men-of-war particularly, do you know whether some of the auxiliary engines of the *Teresa* must have been below her protective deck?

Answer. A great many of her pumps and other machines for handling the propelling machinery were located below.

24. Question. As I understand it, the value of the 5.5 guns and of the

auxiliary engines, which you were unable to inspect on account of the presence of water in the *Teresa's* hold, should be added to your estimate of her value?

Answer. I have included, under "propelling machinery," pumps and other machinery of that sort which is used in supplying water and also for fire purposes in the amount of $325,000. The 5.5 guns could go into the value of the vessel—that is, the amount that possibly they could be sold for.

25. Question. What repairs would the *Teresa* have required to make her a serviceable ship?

Answer. Do you mean to put her back in the same condition as she was when she came out of Santiago?

26. Question. Yes.

Mr. BINNEY. Objected to as irrelevant, for the reason that the libel was filed on the contention that the *Teresa* was taken for the use of the United States as a vessel of war.

Libellant's counsel in reply says that the Secretary of the Navy was under no obligation to take the *Teresa* for the use of the Navy, nor could he do so with justice to the United States (which is to say the Navy pension fund) or to the captors without allowing a value equal to that which the vessel and materials captured on board of her would have brought at sale made in open market, either to a foreign government or to a private individual.

Answer. The vessel would have had to be entirely rebuilt above the protective deck; her engines and boilers thoroughly overhauled, and it would have been necessary to thoroughly clean, disinfect by scraping and removing all woodwork; all her equipment would have had to be removed.

27. Question. What would have been the cost of such repairs over and above any price which might have been obtained for old material taken from the ship and cast aside as scrap?

Answer. The *Teresa's* original cost when new was about $3,000,000. The large shipbuilding companies in this country and abroad generally make an allowance for the deterioration of their vessels of about one-twentieth for each year of age. I think this would be a fair allowance for these Spanish cruisers. This particular vessel was eight years old, and therefore she was worth six-tenths of her original cost, which would be $1,800,000; that is, when she came out of Santiago Harbor on the morning of July 3. Therefore, to place her in the same condition the repairs should cost $1,800,000, minus $1,000,000, at which sum I estimate her value as she lay on the beach, making the estimated cost about $800,000 for the necessary repairs to put her in good condition.

28. Question. What have you to say with regard to the cost of removing old material from the ship which had become worthless as compared with the sum which could have been obtained for it as "scrap?"

Answer. I don't believe the sum obtained from the sale of scrap would more than equal the amount expended in taking out the damaged parts of the ship.

29. Question. So far as you could see them, what was the condition of the *Teresa's* engines? More particularly, was there any indication of their having been pitted through the action of salt water?

Answer. I have stated that the board of which I was a member did not examine the engines of the *Maria Teresa* on account of her being flooded below the lower deck; except the tops of the cylinders there were no signs of deterioration when we made the examination.

30. Question. From your observation of them, did the engines appear to be covered with oil and grease?

Answer. I can't say. The water in the engine room—in fact all of the water in the ship—was in a very greasy, filthy condition. I should imagine, however, from my knowledge of machinery, that as the engines had been running till the vessel ran on the beach the moving parts were fairly well coated with oil as they are when running.

31. Question. To what extent, if at all, are engines in that condition subject to deterioration while permanently submerged in salt water, the submersion continuing, say, for a period of a month or six weeks?

Answer. They deteriorate quite rapidly, which I allowed for in my estimate of the value of the propelling machinery. The propelling machinery of the *Teresa* when new probably cost from $800,000 to $900,000; the estimate I put on them in their condition as the vessel lay on the beach, was $325,000; less than one half.

32. Question. What, in your opinion, would have been fair compensation to a wrecking company for hauling the *Teresa* off the beach at Santiago, making her ready for sea, and taking her to Norfolk or the nearest available navy-yard in the United States where adequate permanent repairs could be made?

Answer. I am not familiar with wrecking methods, but I should say $100,000 would cover such an expense.

33. Question. From your examination of the prize could she have been repaired at Guantanamo to an extent which would have rendered her seaworthy and capable of making a voyage from Guantanamo to Norfolk?

Answer. Yes, I think so; she did start and was abandoned in a storm and drifted a number of miles and finally struck on a reef on Cat Island, where she remained and was destroyed by heavy seas and gales afterwards.

Cross-examination by Mr. BINNEY:

1. Cross-question. How far off were you from the *Teresa* at the time that she was abandoned by her officers and crew on July 3?

Answer. When the *Teresa* went ashore the *Brooklyn* had passed her and was about 3 miles off with the *Teresa* bearing about 3 points abaft the beam, the *Brooklyn* at the time being actively engaged with the *Viscaya* and *Oquendo*, and distant about a mile and a half.

2. Cross-question. You have no personal knowledge of how the flag of the *Teresa* came down?

Answer. I haven't.

3. Cross-question. As far as you could see, was it not necessary for the officers and crew to abandon the vessel at that time as speedily as they could on account of her being on fire, as well as on account of gun fire?

Answer. She was on fire fore and aft almost as soon as she struck the beach, and her officers and crew abandoned her on account of fire and probably to escape capture also, as they were only 5 miles away from Guantanamo.

4. Cross-question. What experience have you had in the construction and repair of modern vessels of war?

Answer. No more than being on duty on them while under repairs in dry dock and alongside of wharves in navy-yards in the capacity of watch officer and navigator and executive officer.

5. Cross-question. Your duties have not required the inspection of the construction and repair of modern vessels of war for the purpose of keeping any account or making any determination in regard to costs?

Answer. Not in regard to costs. The executive officer, among other duties, is the construction officer of the ship, but when repairs are made to the hull of a vessel at navy-yards or naval stations by Government employees, they are generally supervised and controlled by naval constructors who regulate all repairs and make all estimates.

6. Cross-question. You spoke of the *Teresa* being in a favorable position for being hauled off. In point of fact she was held by certain pinnacles of rock so that she couldn't have been hauled off directly. Is that not the case?

Answer. Not from my own knowledge. From the reports published, the official reports published, that appears to have been the case, but from our inspection, using divers who couldn't get under the flat bottom of the ship, and also because of the danger of sending them down below in the interior of the ship, which was flooded, the board couldn't tell that pinnacle rocks had pierced the outer bottom. In the report I think the board stated that the examination extended to the bilges only, in the main part of the ship, and to the keel at the two extremities. Not speaking from my own knowledge, but from subsequent reports, there were two or three pinnacle rocks through the outer bottom which were not discovered till after the first attempt to get her off.

7. Cross-question. You didn't see the vessel again after she was floated?

Answer. No; I was not on board of her after July 9.

8. Cross-question. You know nothing about the condition of the vessel immediately about the torpedo openings?

Answer. The stern torpedo tube was open, the port-quarter torpedo tube casting had been badly cracked by the entrance of a shell, and I think the starboard tube was also open. As far as I remember, the only damage was to the port tube, which was no more than that caused by the shot hole, and this hole was plugged.

9. Cross-question. There is woodwork immediately back of the metal work about the torpedo openings, is there not?

Answer. There was on the *Teresa*.

10. Cross-question. Did you notice anything to indicate that the vessel might have a lateral working in consequence of her injuries so, when in motion in heavy weather, her width was alternatively increased and decreased?

Answer. No; to the contrary. The expert on our board, Naval Constructor Hobson, remarked during the discussion of this particular part of the report concerning the *Maria Teresa* that she was stronger athwart ship than longitudinally. If I remember rightly, he suggested that care be taken about putting her in a heavy head sea.

11. Cross-question. How do you compute the $600,000 which you have estimated to be the value of the under-water body, protective deck, and armor?

Answer. In the first place, the records that we have concerning the vessel stated that she had about 1,000 tons of armor—Campbell plate—which we found to be in excellent condition, and which, in my estimation, was worth at least $400 a ton, making $400,000 for the armor, the $200,000 remaining to be divided between the under-water body and the protective deck. The protective deck is a species of armor plate 3 inches thick, but not so valuable as the side armor, and much more easily laid.

12. Cross-question. Did the examination which you made of the *Teresa* give you any information as to her systems of drainage and ventilation?

Answer. It was practically destroyed above the protective deck, like everything else. The conditions below the protective deck we were unable to examine; it was probably intact, or as good as it was when they left Santiago.

13. Cross-question. In giving your estimate of the value of the vessel, have you assumed that so much of the drainage and ventilation plant as remained was up to the standard of that in vessels under construction for the United States Navy at that time?

Mr. HAYDEN. I object to the question as immaterial, irrelevant, and incompetent.

Answer. I have taken accounts of probable deterioration in my estimate of the *Teresa's* value, placing it at about six-tenths of the original cost.

14. Cross-question. Would not the effect of the conflagration on the vessel have been to make it more difficult to remove the injured superstructure without damage to the uninjured portion of the vessel than if there had been no fire?

Answer. Possibly, yes; that is the reason I stated that I thought that the scrap removed would not bring any more than the cost of removing it because of the care that would have had to be taken.

15. Cross-question. In view of the care that would have to be taken not to damage the uninjured portions of the vessel which remained, is it not possible that the cost of removing the damaged part might have exceeded the value of the material removed as scrap?

Answer. Surely, it might, because no one can tell in tackling a job of that sort how he is going to come out; but the excess would not have been very great, in my opinion—I mean the excess of cost.

17. Cross-question. Was the armor on the *Teresa* such armor as the United States was putting on its naval vessels at that time?

Mr. HAYDEN. I object to the question as incompetent, irrelevant, and immaterial.

Answer. Well, no. We do not use Campbell plate, we used our own.

18. Cross-question. Have you any knowledge of the comparative worth or comparative cost of these two kinds of plate at that time?

Answer. The price of armor plate abroad at that time was the same if not greater than our own armor plate. At that time the Campbell plate was considered as good as any other plate, especially by the English Government. As far as I know the price was the same as the price paid for armor in this country.

19. Cross-question. Have you any knowledge which would enable you to state whether you considered that armor plate as desirable for the vessels of the United States Navy as Harveyized plate?

Mr. HAYDEN. I object to the question as immaterial, irrelevant, and incompetent.

Answer. From my knowledge as an ordnance officer the Campbell plate that was on the *Teresa* is not equal to Harveyized nickel-steel plate made in the United States, or the Harveyized Krupp plates at present being used on our battle ships.

20. Cross-question. Have you any knowledge of the conditions under which the work of floating the *Teresa* and making her ready for sea was done as compared with what they would have been had the vessel been lying off the Atlantic coast of the United States?

Answer. It was a much more difficult operation off the coast of Cuba, so far away from a base where ordinary wrecking supplies could be obtained. Sometimes the most insignificant articles might become necessary and would cause delay on account of having to cable to the United States for it. Otherwise, as far as weather and conditions are concerned, I think they probably were much more favorable off the coast of Cuba than anywhere along the northern coast of the United States.

21. Cross-question. By "weather" do you mean less liable to storm?

Answer. Less liable to rough weather.

22. Cross-question. But did not the climate increase the cost, by making it impossible for the men engaged in the work to work as continuously as they could have done off the coast of the United States?

Answer. Possibly, yes. The same as work in any West Indian port costs more when performed by people from the north than the same work would cost at their own homes on account of climatic conditions.

23. Cross-question. Have you taken these unfavorable conditions into consideration in your estimate of the probable cost of the work of floating the *Teresa*, and repairing her as far as was immediately necessary and bringing her to the United States?

Answer. Yes, but I stated I was not familiar with wrecking methods, and my statement of the cost is only a rough estimate.

24. Cross-question. In making your estimate, had you any knowledge of the amount actually paid the Merritt & Chapman Derrick and Wrecking Company for their work?

Mr. HAYDEN. I object to the question as incompetent, immaterial, and irrelevant.

Answer. No; I know nothing about the amount paid.

25. Cross-question. It appears from the record that about $188,673.90 were paid the Merritt & Chapman Derrick and Wrecking Company for their actual services in regard to the *Teresa*. Do you wish to give it as your opinion that not more than $100,000 should have been paid?

Mr. HAYDEN. I object to the question as incompetent, immaterial, and irrelevant. The question is objected to for the further reason that it does not appear that the sum of $188,673.90 was expended or paid to the wrecking company on account of the recovery of the *Teresa*. It appears from the indorsement of the Bureau of Supplies and Accounts, which appears on page 3 of the printed evidence, that the sum of $234,158 was paid on account of wrecking Spanish vessels near Santiago de Cuba, and the Bureau, by some course of reasoning not stated and not apparent, was pleased to make the assumption that the sum of $188,673 was spent on the *Teresa* alone.

Answer. As I said before, my estimate was a rough one, and I am not familiar with wrecking methods; possibly my estimate may be low.

26. Cross-question. In order to float the *Teresa* it was absolutely necessary to secure the services of some outside persons engaged in the business of wrecking, was it not?

Answer. Yes, I should say so; without going to as much or more expense in purchasing or hiring a wrecking plant for use of the Government.

27. Cross-question. Is not your estimate of the cost of repairs merely a subtraction of the amount which you considered the vessel worth as she lay off the coast of Cuba from what you can say to have been her value at the beginning of the engagement?

Answer. Yes, sir; I first estimated her total value as she lay on the beach after the action; then, taking her original cost and applying to it the customary allowance for deterioration for eight years, I obtained a value for her as she came out of the harbor at Santiago before the battle; and the cost of repairs that I gave is the difference between the estimated value and this value.

28. Cross-question. You have never made any detailed estimate of the cost of repairs?

Answer. No. I have not been in a position to, and, as I have stated in my testimony, I do not pose as an expert in naval construction.

29. Cross-question. And you have never made any estimate of the cost of repairs necessary to make her, the *Teresa*, a thoroughly good and well-equipped fighting vessel according to the standard of the United States Navy?

Mr. HAYDEN. I object to the question as irrelevant, immaterial, and incompetent.

Answer. No.

30. Cross-question. Have you any knowledge which will enable you to state that the *Teresa* might have been sold for $1,000,000 to persons not connected with the United States Government at the time that she lay off the coast of Cuba?

Answer. No; I never heard of any such proposition.

31. Cross-question. Is it not possible that if the United States had not taken the vessel, and that, supposing her to have been a legal prize, the captors had had to have her sold to outside parties, the amount received would have been much less than $1,000,000?

Mr. HAYDEN: I object to the question as irrelevant, immaterial, incompetent, and speculative.

Answer. It is possible; yes. All things are possible.

32. Cross-question. From your knowledge of the circumstances at the time, do you feel at all confident that the vessel could have been sold to outside parties for anything like $1,000,000 at the time that she lay off the coast of Cuba?

(Same objection.)

Answer. She was worth $1,000,000 according to my estimate. If it would only cost $100,000 or $200,000 to wreck her I do not see why there should not have been lots of purchasers.

33. Cross-question. Have you any knowledge of instances in which foreign governments have bought wrecks of vessels of war or vessels of war damaged in naval engagements?

Answer. Not that I know of. Foreign governments, as a general thing, do not get their vessels that way.

34. Cross-question. Have you any knowledge of shipbuilders purchasing wrecks of vessels of war or vessels of war damaged in naval engagements for the purpose of reconstructing them and selling them to some government?

Answer. No; not to governments; but wrecks are often purchased by shipbuilding people and other companies for the purpose of refitting them for some other seagoing purpose.

35. Cross-question. Could the *Teresa* have been made useful in the merchant marine service?

Answer. No; not without too much cost, probably, although her engines and boilers were in fair condition, and she might have been fixed up for use as a merchantman.

36. Cross-question. For that purpose, the armor would have had to be removed, would it not?

Answer. Yes.

37. Cross-question. And that would have been an expensive operation, would it not?

Answer. Yes; an expensive operation.

38. Cross-question. You have stated that the 5.5 guns on the *Teresa* might perhaps have been sold for about $2,000 apiece. The only possible purchasers would have been foreign governments, or gun builders engaged in the construction of ordnance for governments, would they not?

Answer. For use as guns, yes.

39. Cross-question. Have you any knowledge of foreign governments buying damaged ordnance for the purpose of putting guns in condition for service?

Answer. No; not of foreign governments buying ordnance and making repairs themselves, but guns have been bought by firms and put in condition and sold to foreign governments.

40. Cross-question. Has not that been done only when the guns could be bought for little more than their value as scrap?

Answer. I don't anything about the prices obtained.

41. Cross-question. How much inspection did you give to the 12-inch guns and mounts on the *Teresa?*

Answer. By looking through the guns, examining them as carefully as possible, and inspecting the insides of the turrets and the mounts. The inspection was only a casual one to look for grave faults and deteriorations that would prevent the further use of the gun.

42. Cross-question. As an ordnance officer do you consider that it would have been desirable to use guns of this caliber in the United States Navy?

Mr. HAYDEN. I object to the question as incompetent, irrelevant, and immaterial.

Answer. Surely not; but they could be used.

43. Cross-question. In your estimate of $75,000 for these two guns and their mounts, have you contemplated their use in the United States Navy as they were or after their being rebored so as to bring them to the standard caliber of the United States Navy?

Mr. HAYDEN. I object to the question as irrelevant, immaterial, and incompetent.

Answer. My estimates were based upon using them as they are, as I would not consider it advisable to change their caliber.

44. Cross-question. From your knowledge of the conditions at the time, what do you believe these guns could have reasonably been sold for to outside parties, lying off the coast of Cuba?

Answer. I really don't know who would buy them. My idea was made with the idea of using them in the service. People, as a general thing, don't buy old guns unless they have to.

45. Cross-question. In the opinion of your board the *Colon* was a salvable ship, was she not?

Mr. HAYDEN. I object to the question as immaterial, irrelevant, and incompetent.

Answer. To answer the question I will read the conclusion of the board:

"The board recommends that as soon as possible the *Cristobal Colon* should be secured by cables and anchors, so she can not be moved from her present position. The board recommends that the wrecking companies be directed to leave at the earliest possible moment with all facilities possible to wreck the *Cristobal Colon*, and is of the opinion that if the weather continues favorable the prospects are good for saving the vessel."

46. Cross-question. Do you know whether there were any delays in carrying out the recommendations of the board in regard to the *Colon?*

Answer. That I know nothing about. I came North on the *Brooklyn* with the squadron and know nothing more about the wrecking operations of my own knowledge.

Redirect examination by Mr. HAYDEN:

1. Redirect question. Commander Mason, in your service have you had to do with ordnance and armor? And if so, please state to what extent your attention has been particularly directed to those subjects.

Answer. I served at the gun factory at the Washington Navy-Yard for one year; for four years in the Bureau of Ordnance; then as navigator and ordnance officer of the *Monadnock* for one year; again in the Bureau of Ordnance for six months; then as inspector of ordnance at the Indian Head, Md., proving grounds for three years and six months, and for one year as inspector of ordnance in charge of the torpedo station. At the Washington Navy-Yard, in the Bureau, and at the proving ground I had a great deal of experience with guns and armor. At the proving ground all the large-caliber guns in the service were tested and most of the armor plate.

2. Redirect question. At the time of the destruction of the *Teresa*, how how did the so-called "Campbell plate" compare with armor then made in this country or in use elsewhere in the navies of the world?

Answer. Favorably; but of course I think our armor is better.

3. Redirect question. State, if you know, where the *Teresa* was built.

Answer. At Bilbao.

4. Redirect question. Where was her armor made?

Answer. Bought in England, of the Armstrong Company, I think; I am not sure.

5. Redirect question. You have testified on cross-examination that it is somewhat unusual for a Government to buy for naval use a vessel which

has been damaged in an engagement, or guns which have been through a naval engagement and possibly have sustained some damage. Is it not usual for a nation whose navy has captured an armed enemy vessel or enemy guns to appropriate them for use in its own naval service or to retain them as trophies?

Answer. Yes, sir; almost invariably so, as a matter of sentiment if nothing else. In addition they often go further and keep the names of the captured vessels in the service as we do in our own service and England does in hers.

Recross-examination by Mr. BINNEY:

1. Recross-question. In making your estimate of the value to the United States of the *Teresa*, including her two large guns, have you taken into consideration at all, as regards either vessel or guns, the sentiment to which you have referred?

Answer. Thus far, yes; as an ordnance officer I wouldn't recommend putting those guns in any of our vessels; as one of the captors and as a naval officer I would be willing to pay more than that to have them fixed up and mounted so they could be of some use. In regard to the vessel there is no sentimental value at all.

The examination by counsel being completed the witness is asked if he knows anything further which may be material to the subject of his examination, or which may be of benefit or advantage to any of the parties hereto, and if so to state, and in reply says: I do not.

N. E. MASON,
Commander, U. S. Navy.

STATE OF RHODE ISLAND,
County of Newport, ss:

I, Max Levy, a notary public, duly appointed for the county of Newport, do hereby certify that on the 15th day of February, in the year of our Lord 1901, I was attended by James H. Hayden, esq., of counsel for the libellant, and by Charles C. Binney, esq., of counsel for the United States, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition made by him was reduced to writing from his statement, and he, after carefully reading the same, subscribed the same after having made the alterations indicated herein.

And I do further certify that I am not of counsel nor attorney for either of the parties in the depositions and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand this 26th day of February, in the year of our Lord 1901.

[SEAL.] MAX LEVY, *Notary Public.*

Deposition of Commander Raymond P. Rodgers, U. S. N., for libellant.

Met at New York on February 18, 1901, pursuant to adjournment.

Present, William B. King, esq., counsel for the libellant and for the captors; Charles C. Binney, esq., special attorney representing the United States.

It is stipulated by and between the counsel that these depositions be taken before William J. Leonard, notary public, and by the hand of Albert M. Eberly, stenographer, and by him reduced to writing.

RAYMOND P. RODGERS, being duly sworn, in answer to interrogatories propounded by counsel, deposes as follows; being examined by Mr. King for libellant, the witness says:

1. Question. Please state your occupation.

Answer. I am a commander in the United States Navy.

2. Question. How long have you been in the Navy?

Answer. I have been in the Navy since 1864.

3. Question. What station had you during the Spanish war?

Answer. I was the executive officer of the battle ship *Iowa*.

4. Question. Were you a member of the board of inspection appointed by Rear Admiral Sampson after the battle of Santiago de Cuba?

Answer. Yes; I was the senior member of the board.

5. Question. Will you please state when you first visited the *Maria Teresa* after the battle of July 3.

Answer. I first visited the *Maria Teresa*, in company with the board referred to, on the morning of the 7th of July.

6. Question. When did you afterwards visit her?

Answer. I again visited her on the 9th of July, after having examined the other Spanish wrecks.

7. Question. Were you on the vessel again after the 9th of July?

Answer. Not after the 9th of July.

8. Question. On the occasion of these visits did you make an inspection of the condition of the vessel?

Answer. Yes.

9. Question. Please state how you found the *Maria Teresa* situated at the time.

Answer. The *Maria Teresa* was found to be beached in a cove, some five or six miles west of the entrance of the harbor of Santiago de Cuba. She was lying "bow on" to the beach, and was grounded on a fairly smooth, uniform bottom throughout almost her entire length. The soundings at the bow gave a depth of about 14 feet of water and at the stern 25 or 26 feet. For more definite information concerning soundings reference may be made to the report of the board referred to, which contains a diagram of the soundings.

10. Question. Is the report to which you refer the one beginning on page 573 of the Appendix to the Report of the Bureau of Navigation, 1898?

Answer. That is the report, and the diagram [pointing to the diagram immediately following page 572] is the diagram referred to.

11. Question. Have you recently examined that report as far as it relates to the *Maria Teresa*?

Answer. I have.

12. Question. Will you please state to what extent that report represents your views as to the condition of the *Maria Teresa*, at the time when you examined her and at the present time.

Answer. That report represents my views. It was made in this way: In order to accomplish the work quickly the board was divided into committees, to each of which was assigned a special work for examination. These committees handed me their reports and these were considered by the whole board and modified, if necessary, to represent the views of the entire board.

13. Question. Please state to what extent you yourself made a personal examination of the vessel and its different parts.

Answer. While each one of the committees was engaged in its special work, I went over the vessel so as to inform myself in regard to the entire condition of the vessel.

14. Question. Please describe, in a general way, the condition of the vessel, taking up in detail the upper works, the armor, the machinery, and the hull.

Answer. Viewed from the outside, the hull of the vessel appeared in good condition, with the exception of a number of shot holes and the fact that the paint was peeled off by the heat. The wooden decks and wooden bulkheads were entirely consumed, except on the quarter-deck, where the planking was charred but not consumed. The deck beams and stringer plates were very much warped forward of the after turret. This warping was due to the heat of the conflagration. The protective deck seemed perfectly intact and the under-water body seemed uninjured, and, owing to the apparently good condition of the under-water body, divers from the ships of the squadron were sent for to examine it. The divers reported the bottom practically intact, but later it was found that there was a hole in the ship's bottom underneath the foremast, which naturally the divers could not detect from an outside examination. The vessel was beached or stranded in a very sheltered position, and the board was of the opinion that the *Maria Teresa* could be readily saved and that it was desirable to save her.

15. Question. In order to make the vessel efficient what repairs, in general, would have been necessary?

Answer. In order to make the vessel thoroughly efficient the whole of the upper works, except perhaps that part near the stern, would have to be removed and rebuilt.

16. Question. What work would have been necessary to make her thoroughly efficient as to the machinery?

Answer. At the time of my visit I think the machinery—that is, the motive power of the ship—could have been made efficient, after the vessel was pumped out, with very little delay.

17. Question. What would have been required so far as the armor is concerned?

Answer. I consider that the armor itself, so far as our examination went, was intact.

18. Question. Have you made any estimate of the value of the *Teresa* as she lay on the beach after the battle on the 3d of July?

Answer. Yes, I have made an estimate of her.

19. Question. Will you please state in detail what that estimate is?

Answer. It is reported that the *Maria Teresa* cost £600,000, or about $2,900,000. I estimate that the hull and its fittings, and the machinery of the *Teresa* on the early morning of the 3d of July—that is, before the engagement—to be about $1,900,000, the machinery itself being estimated at $700,000 out of that amount. In this estimate the armament and armor are not included. To remove and rebuild the upper works and fittings and to repair the under-water body I estimate the cost of this to be about $700,000. The armor, which appeared to be intact and uninjured, I place at $350,000; it probably cost considerably more. The machinery I estimate at a valuation of about $700,000, based on the contract or developed power of 13,000 horsepower, and I think that $250,000, a liberal appropriation for its overhaul and repair. The machinery was probably in very good condition at the time the vessel was beached. I consider that much of the armament, the turret mounts, turret machinery, ammunition tanks, etc., had a considerable value. It is rather difficult and vague to place a valuation upon it, but I consider that it was worth certainly more than $50,000, and probably not more than $100,000. So that my estimate of a fair valuation on the *Maria Teresa* as she lay on the beach at the time of my visits on the 7th and 9th of July is between $1,350,000 and $1,400,000.

20. Question. Do you include in this valuation any estimate of the cost of raising the vessel and taking her to port?

Answer. No; I have omitted that because it is shown in evidence the amount which the Government did pay for its efforts to bring the vessel north.

21. Question. You have stated that you would consider $250,000 would be necessary for the overhauling and repair of the machinery, but that it was probably in very good condition when beached. Will you please explain just what is meant by those statements?

Answer. The engine and boiler compartments of the vessel were filled with sea water for a considerable period and this would necessitate, if the vessel were to be overhauled and rebuilt, an entire overhauling of the motive power of the ship, and while a considerably smaller sum only might be necessary, when you go into that kind of work it is difficult to estimate where it is going to cease, and so I have put an estimate large enough, in my opinion, to meet almost any contingency.

22. Question. Was there any change in the condition and value of the machinery between the time when she was beached and the time when she was raised?

Answer. Yes; I should say somewhat, but it would be difficult to say to what degree. All machinery, if not cared for, is found to need repairs when called upon for work; but if I take your question in a different way I believe that if the compartments should have been pumped out at once the machinery would have been ready to steam, say to New York, with very slight repairs.

23. Question. In your estimate of $250,000 for the repair of the machinery could you make any statement as to the proportion of that which would have been required on account of the deterioration in value of the machinery from the sea water?

Answer. I do not believe that the principal machinery itself suffered much deterioration except that which comes to any machinery that is not cared for.

24. Question. Had there been any immediate use for the *Maria Teresa* could she have been floated more promptly than she was and put into service?

Mr. BINNEY. Question objected to as irrelevant

Answer. I do not know exactly when the work began, but I do not think it did begin until about the 1st of August, wh ch was a month after the vessel was stranded; and in answer to your direct question I think yes, that the vessel might have been floated and taken to Guantanamo considerably sooner had urgency been considered; and in saying this I do not mean to reflect in any way upon the people who were in charge of the work, because urgency was not considered paramount, the war being practically over; but I would say in that connection that had the service of a vessel of the *Maria Teresa's* power been urgently demanded by the Government, I think she not only could have been more promptly floated, but that she could have been put in a condition to render good service for a sum considerably less than that which I have estimated for above. The subsequent events would seem to substantiate this, as it appears that the *Maria Teresa* was able to steam under her own power.

Cross-examination by Mr. BINNEY:

1. Cross-question. What experience have you had in the construction of modern vessels of war?

Answer. None except that which comes generally to an officer.

2. Cross-question. Have you ever inspected any vessel with reference to the cost of different items of repair that may have been needed?

Answer. In a general way. I was at one time chief intelligence officer at the Navy Department for a number of years; and I was later naval attaché abroad, in which positions I had to deal somewhat with costs.

3. Cross-question. What did you have to do with costs in these positions?

Answer. A consideration of them in regard to the cost of ships.

4. Cross-question. Was not the information which you gained in connection with these duties mainly general information as to the cost of vessels of war?

Answer. Mainly so.

5. Cross-question. Do I understand, then, that you have never had occasion to actually pass upon particular instances of repairs which may have been necessary with reference to their cost?

Answer. No; I have undoubtedly occasionally had, as member of boards of survey, and as an officer charged with repair work on board ship, frequently had occasion to make estimates of cost, but I do not wish to appear as an expert in making detailed estimates. In making general estimates yes, I have a knowledge.

6. Cross-question. Have such estimates as you may have been required to make ever involved as much work as would have been required on the *Maria Teresa?*

Answer. No.

7. Cross-question. Then, I understand that the work which would

have had to be done on the *Teresa* was a much larger job than anything you have been concerned with?

Answer. Quite; that is, as repairs.

8. Cross-question. In the inspection which you made of the *Teresa* did you learn as to whether there was or was not woodwork behind the exterior metal work about the torpedo openings?

Answer. I do not recollect.

9. Cross-question. Did you notice anything to indicate that the vessel had a lateral working in consequence of her injuries, so that when in motion in roughish water her width might alternately increase and decrease?

Answer. The constructor on the board considered the vessel more strong laterally than longitudinally, but naturally it was recognized that she was weakened in her upper works.

10. Cross-question. Are you able to give your estimates of the value of the *Teresa* before she was floated, and of the cost of repairing her, in any greater detail than you have done?

Answer. Yes.

11. Cross-question. Will you please do so?

Answer. I estimate that the hull and fittings on the *Maria Teresa* on the morning of July 3 were about $1,200,000. I have placed an estimate of about $100,000 to remove her upper works, and to rebuild her upper works I have taken that this would cost about two-fifths of the whole, which would make about $480,000, and I put about $50,000 to repair the under-water body. So far as I could see the under-water injuries would not cost that much, but I have put that as an outside sum. To renew fittings I put in a lump sum of about $70,000, which makes $700,000. That is a general estimate in which I believe the whole to be outside sums. I have put armor at $350,000. I fancy that the armor cost very much more. I have put, as I said before, $250,000 to overhaul entirely the machinery and renew and replace parts necessary. And about armament, turrets, etc., the details I gave there were sufficient—as near as I can estimate, between $50,000 and $100,000.

12. Cross-question. In this matter of the cost of removing the upper works of the *Teresa* do you consider that the fact that the upper portion of the vessel had been on fire would make that removal more costly than it would have been otherwise?

Answer. The removal? No. If you had said repair, yes; but not removal.

13. Cross-question. I mean particularly with reference to the removal of the injured material without damage to the uninjured material to which it was immediately attached.

Answer. I believe the entire removal of the upper works would be more economical than to attempt to leave any good material which might be there than to repair the upper works. The upper works of a ship is almost a separate structure from that part which is below the armor deck; consequently the removal of the whole upper works leaves a fairly good foundation upon which to erect a new structure.

14. Cross-question. This upper portion being immediately attached to the substantially uninjured lower portion, do you consider that the conflagration had made it more difficult to remove the upper portion from

the lower portion without injury to the latter than it would have been had there been no fire?

Answer. No; I do not think more difficult.

15. Cross-question. What was the character of the armor plate on the *Teresa?*

Answer. It was made in England about 1890, and when I give the date of about 1890 I mean within a couple of years of that. It was doubtless what is called compound armor, for at that time all armor in England was compound.

16. Cross-question. Was it such armor as was being put on naval vessels of the United States at that time?

Answer. At that time the United States had no armored vessels except the *Miantonomoh*, and the United States Government had paid for compound armor for the *Miantonomoh* in England something between $500 and $550 a ton.

17. Cross-question. By the words "at that time," in my previous question, I meant at the time wrecking operations were begun on the *Maria Teresa* in 1898. Will you kindly answer the question with reference to this explanation?

Answer. The armor on the *Maria Teresa* was undoubtedly inferior to armor manufactured and placed on United States vessels in 1898. Between 1890 and 1898 the manufacture of armor has been greatly improved in the United States and Europe.

18. Cross-question. As a naval officer of practical experience, would you have considered it desirable for the United States, in 1898, to have bought such armor as was on the *Teresa* for one of its own vessels of war, even at as low a price as $350,000?

Answer. No; but I do not think for a moment that if the United States were rebuilding and intended to utilize the *Maria Teresa* that they would put any other armor upon her than that which was upon her on the 3d of July, 1898.

19. Cross-question. Did your inspection of the *Teresa* enable you to learn whether the drainage and ventilation plant of the vessel, so far as it was uninjured, was up to the standard of vessels of the United States Navy at that time?

Answer. No; for the reason that the principal parts of this would be below the armor deck; consequently submerged.

20. Cross-question. Do you know anything about the conditions under which the work of floating the *Teresa* and making her ready for sea was done as compared with the conditions had the vessel lay off the Atlantic coast of the United States?

Answer. I do not. I saw the *Maria Teresa* about the 16th of July, but I had nothing to do with the wrecking or saving of the vessel, and all that I know is hearsay or gathered from other testimony.

21. Cross-question. This repair and reconstruction of the *Teresa*, of which you have estimated the cost, is such repair and reconstruction as would have been made in the United States after she had been brought into a port of the United States, is it not?

Answer. Yes.

22. Cross-question. In this estimate, then, you have not included the cost of such temporary repairs as were necessary to enable her to make the voyage to the United States?

Answer. No.

23. Cross-question. Have you any knowledge of circumstances existing in July or August, 1898, which would enable you to state whether you believe the *Teresa* could have been sold to any outside parties as she lay off the coast of Cuba?

Answer. I know nothing of any such conditions.

(Question objected to as immaterial, in view of the United States having taken possession of the vessel.)

24. Cross-question. Then, in making your estimate of the value of the *Teresa*, as she lay there off the coast of Cuba, you have not taken into consideration the possible fact that if the Government of the United States had not seen fit to have the vessel floated and appropriated to the use of the United States, it may have been impossible to have sold her for the sum at which you valued her?

Answer. I have not considered that at all.

25. Cross-question. You have not considered the case as if the United States had been a bidder in the open market, and expecting to get the vessel for the lowest sum that it could?

Answer. The estimate I have made I believe to be a fair bid for the United States to have made if it were a bidder, or a fair valuation for the United States to have paid for the vessel if it had been a bidder.

26. Cross-question. And irrespective of whether there might or might not have been other parties who would have been willing to buy the vessel?

Answer. I made the valuation on the basis that if I were an officer of the United States Government appraising the *Maria Teresa* upon that occasion, that, with the light now before me, I would have made that valuation.

(Counsel for libellant objects to the two foregoing questions on the ground that the issue is the value of the vessel to the United States, and these questions are irrelevant to that issue.)

27. Cross-question. You have stated that you believe that the *Maria Teresa* could have been put in condition to render good service for a sum considerably less than that which you have estimated as the cost of repairs. By the expression "in condition to render good service," you do not mean first-class condition, I take it?

Answer. I do not mean first-class condition; but there are a great many vessels whose condition is not first class which are kept in service and do good service.

28. Cross-question. Is it usual in the United States Navy to keep vessels of the type of the *Teresa* in the service in other than substantially first-class condition?

Answer. To answer that question, I must say that it is only within a very few years that the United States has had vessels of the type and value of the *Maria Teresa*. They are all comparatively new.

29. Cross-question. As a naval officer of practical experience, do you consider that, barring cases of emergency or temporary expediency, modern war vessels should remain in commission in other than first-class condition?

Answer. Except under the conditions expressed in your question, I do not think that vessels should remain in commission except in first-class condition.

30. Cross-question. In the estimate which you have made of the value of the *Teresa* as she lay off the coast of Cuba, what allowance have you made for gradual deterioration in view of the fact that she was not a new vessel?

Answer. Well, I considered that, and as all the upper works of the vessel would be removed and renewed, and as an allowance was made for the entire overhauling and repairing of the machinery, the sum that I had placed—$1,900,000 for machinery and hull—included any deterioration which might have taken place.

31. Cross-question. Was the *Teresa* of a type which it would have been desirable for the United States to follow precisely in constructing a new vessel for its own navy in the year 1898?

Answer. No, not in 1898; but fashions change in ships, and when the *Teresa* was designed she was a very good ship of her class, and my opinion is that if the United States could have bought her, or a vessel like her, when the war was imminent, they would have been very glad to have purchased her.

32. Cross-question. In the estimate which you have made of the value of the *Teresa* when she lay off the coast of Cuba, have you made any allowance for the fact that she was not of the type most approved in the United States Navy in the year 1898?

Answer. No; I did not take that into consideration, for the reason it would be rather difficult to say what the type of vessel of the size of the *Teresa* most approved for the United States Navy would have been, and for the reason that I believed that it was a type which, in 1898, the United States would have been very glad to have added to its fleet for war purposes. As an illustration of that, I may say that we bought the *Topeka*, which had been built in England for Brazil a number of years before and was decidedly out of fashion, and yet in the desire to add to its fleet, the United States bought it, and has since spent a large sum of money in refitting it for the United States Navy as a training ship for its apprentices.

33. Cross-question. When you say that the United States would have been glad to have added the *Teresa* to its fleet for war purposes in 1898, you mean, do you not, that at the outbreak of the war the United States would have been glad to buy such a vessel?

Answer. Until the war was practically finished.

34. Cross-question. You have stated that if it had been necessary the *Teresa* could have been floated and taken to the United States sooner than was actually attempted to be done. Do you mean to express an opinion that the work of floating the *Teresa* was done in a dilatory or careless manner in any respect?

Answer. No; if you will remember in my evidence I disclaimed any such intention. What I mean is that if people are working under urgent conditions the work is naturally much more quickly accomplished than if there is no particular interest felt in it by the people who might demand the urgency.

35. Cross-question. For the purpose of floating the *Teresa* and bringing her to a port of the United States it was necessary to employ the services of outside parties engaged in the business of raising wrecked vessels?

Answer. I should say undoubtedly their services were absolutely essential and necessary.

36. Cross-question. In your estimate of from $50,000 to $100,000 for armament, turret mounts, turret machinery, etc., precisely what amount have you allowed for the guns of the *Teresa?*

Answer. The two turret guns and their mounts appeared to be in good condition. Doubtless they may have needed some trifling repairs which all guns and all machinery need at times, but apparently they were in good condition. The 5½-inch guns were, barring the loss of their breechblocks, I should say, in serviceable condition. Their mounts would have needed considerable overhauling, as they were probably somewhat distorted by heat.

37. Cross-question. In making this estimate of $50,000 to $100,000 for these various items which you have named, what net valuation do you place upon these guns?

Answer. Well, I should say that for a net estimate on the turret guns, their mounts and their machinery, $25,000 to $30,000 apiece would be considerably below their value, and I should say that the 5-inch guns and their mounts might be fairly estimated net at $5,000 apiece. I should think that my estimate of $50,000 to $100,000 is a fair general valuation.

38. Cross-question. In putting these valuations on the guns, do you mean the prices for which they could have been sold to outside parties or their value to the United States?

Answer. I do not suppose that in the United States anyone but the United States Government is in the gun market or buys guns of that kind, but I believe those guns would have been very useful in certain localities under certain conditions. They were similar to some of the best guns they used in the defenses of Santiago. These had been taken out of the *Reina Mercedes.*

39. Cross-question. Have you considered that unless these guns had been taken for the use of the United States they could not have been sold to outside parties?

Answer. Probably they could have been sold for old metal only.

40. Cross-question. None of these guns were of the precise caliber in use in the United States naval service?

Answer. No; not the guns that I refer to—the main battery.

41. Cross-question. As a naval officer of practical experience, do you consider that those guns could have been used with the calibers which they had or could have been rebored to bring them to the nearest standard calibers of the United States service?

Answer. I think to make them conform to calibers already existing would have been undesirable, because the guns might have to be rebuilt to have done that.

42. Cross-question. But you consider it would have been desirable as a practical matter to use those guns as they were in the United States Navy as far as the question of caliber is concerned?

Answer. I do not think it would have been desirable to have used them that way, but I mean to say that, if the vessel's hull were fit to carry those guns, those guns could have been made readily available for service in that ship and would have made a very good armament for her.

43. Cross-question. Is it not a fact that in the naval service there is rather a sentiment about retaining and using captured vessels of war and ordnance?

Answer. I should say, yes. To bring in a prize and make her part of one's own fleet is a sentiment which is very well to have in the Navy, and to repair such a vessel and to have her as an object lesson to people who come after furnishes a tradition which is well for the Government to foster.

44. Cross-question. Has this laudable sentiment affected in any way your valuations of the *Teresa* and her armament in estimating what you consider they would have been worth to the United States Government?

Answer. Not in the least. Whatever sentiment I had then, ample time has elapsed for it not to influence me now, and, as I stated before, I believe the figures I have given such as I would have made with the same knowledge and lights if I were a member of a board to appraise the vessel for the Government.

45. Cross-question. You have stated that a part of the work of the board which inspected the *Teresa* was performed by separate committees. What particular line of work was assigned to Commander N. E. Mason?

Answer. Commander Mason was the next senior member to me, and my recollection is that I asked him to accompany me on a general inspection, so that he was of no special committee, but he and I went about together and inspected the thing as a whole.

Redirect examination by WILLIAM B. KING:

1. Redirect question. Was the armor of the *Maria Teresa* of such a nature that the vessel would have been serviceable as an armored cruiser in the Navy?

Answer. Perfectly so.

2. Redirect question. Can you mention any vessels of the United States Navy that have armor nearly like that of *Maria Teresa?*

Answer. Probably none but the *Miantonomoh*. When we began the manufacture of armor in this country we decided for steel and we made no compound armor, but at that time, up to 1894, the difference in efficiency of compound armor and steel was very slight.

3. Redirect question. What would be the nearest vessels of the United States in efficiency of armor to the *Maria Teresa?*

Answer. I fancy that the armor of the *Maine* and *Texas* would be similar. They are vessels of about the same size also, and I should say that the armor of these vessels would be about the same. In saying this I do not think that the *Maine* and *Texas* had harveyized armor.

4. Redirect question. Now, in a general way, I would like to have you say what vessels of the United States Navy now in service the *Teresa* would have been nearest like in general efficiency and value had she been repaired in the manner contemplated by your testimony.

Answer. The vessels with which she is comparable are the *New York* and *Brooklyn*. The *New York* and *Brooklyn* are larger and I consider superior, but she is comparable with the *New York* and *Brooklyn*, and the *Olympia* might be included in the comparison.

5. Redirect question. Which one of these vessels would the *Maria Teresa* come nearest to?

Answer. It would be difficult to say. She was a vessel very considerably protected by armor and carried two very heavy guns, so that I presume that would be more nearly comparable with the *New York*. The *New York* possesses higher speed, but had the *Maria Teresa's* battery been efficiently served it ought to have been a match for the battery of the *New York*. She was a vessel heavily protected by armor.

6. Redirect question. Can you mention any instances coming within your professional knowledge of vessels now in the United States Navy recently requiring very extensive repairs?

Answer. Yes; although for the sums to be expended upon them I should refer you to the official reports that I might mention—for instance, the *Olympia* and *Baltimore*, recently returned from the Philippines, and the *San Francisco*, which went out of commission shortly after the war in Cuba closed.

7. Redirect question. In one of your replies to cross-examination you said that "repairs and work on the *Teresa* was a larger job than others with which you had been concerned." Do you wish to add any explanation to that?

Answer. I do not wish to make any explanation.

8. Redirect question. Have you been concerned in construction work or inspection of construction?

Answer. No.

9. Redirect question. In one of your answers you refer to the fact that your experience in making estimates had been general experience that comes to an officer in the Navy. Can you make any statement which will show what such general experience is?

Answer. Well, I have studied costs of vessels and their machinery, fittings, armament, etc., both in our own Navy and foreign navies, chiefly, one might say, for the purpose of making comparisons between our own costs and those of similar articles abroad.

10. Redirect question. What other nations use guns of the caliber of the guns on the *Maria Teresa?*

Answer. Certainly the French use the 14 cm. guns, and my recollection is that the heavy guns were 27 cm., and that is a caliber which is also used in the French service. The Germans use the metric system and doubtless have calibers similar.

11. Redirect question. Is not the metric system of guns used in all navies except those of England and America?

Answer. Yes; but all that buy guns in England buy them originally in inches and convert the figures into centimeters.

12. Redirect question. Please state what your present duty is in the Navy.

Answer. I am at present on the staff of the Admiral of the Navy, and I am also a member of the general board.

By the NOTARY:

Question. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this,

your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. Nothing occurs to me at this time.

RAYMOND P. RODGERS,
Commander, United States Navy.

Sworn to and subscribed before me this 23d day of February, A. D. 1901.

WILLIAM J. LEONARD,
Notary Public # 51, Kings County, N. Y.

Deposition of Lieut. E. E. Capehart, U. S. N., for libelant.

Taken at New York, February 18, 1901, before William J. Leonard, notary public, pursuant to agreement of counsel.

Present: William B. King, esq., of counsel for the libelant; Charles C. Binney, special attorney for the United States.

By Mr. KING:

1. Question. What is your name, age, and occupation?

Answer. Edward Everett Capehart, lieutenant, United States Navy; age, 42 years.

2. Question. How long have you been in the naval service?

Answer. It will be twenty-four years this coming June.

3. Question. Please state what has been your service in the Navy from the beginning until now, in a general way.

Answer. I have served on the *Lancaster* on the European station, 1881 to 1883; on the *Galena*, 1883 to 1886; 1886 to 1890, instructor at the Naval Academy; 1890 to 1893, I served on the *Enterprise*, *Atlanta*, and *Chicago;* in the *Chicago* on the staff of Admiral Walker; 1893 to 1896, duty at the torpedo station, Newport, R. I.; 1896 to 1899, *Terror* and *New York;* on the *New York* for three years and the *Terror* three months. June, 1899, to February, 1901, again at the torpedo station. I have just joined the *New York* again.

4. Question. What duty were you on at and immediately after the battle of Santiago, July, 1898?

Answer. From the 6th of July, 1898, and I don't recollect exactly how long afterwards, I should say two weeks, I was a member of a board appointed by Rear-Admiral William T. Sampson, commander in chief of the United States naval force off Santiago, to inspect and report upon the condition of the Spanish vessels which had been beached and damaged by the gun fire of the United States squadron in the action which took place July 3d of that year.

5. Question. Did you take part in the inspection and preparation of the report on the *Teresa?*

Answer. I did.

6. Question. What particular part of the duty fell to you?

Answer. I was a member of the subcommittee to report upon the effect of gun fire, to plot the positions of the shot holes, and make a general report upon the destruction caused by the gun fire of the squadron.

7. Question. How many times were you on the vessel?

Answer. Altogether, I should say I spent between four and five days on her and around the outside in a boat.

8. Question. Now, aside from the special duty which you say you performed, to what extent did your observation go as to her general condition in other respects?

Answer. Well, the entire board made an inspection of the ship together; made a casual inspection on July 6, and again an inspection in detail on July 9, and as a member of the board I went all over the ship where she was accessible.

9. Question. Will you please state generally what the situation of the vessel was, and the conditions of the various portions of the vessel, including hull, machinery, and armor and armament?

Answer. We found the vessel lying nearly upright, resting easily on the bottom for a greater part of her length, with about 2¼ to 2½ fathoms under the forward part of the vessel and about 4 fathoms aft. The armor was intact and in place. The superstructure was badly warped and practically rendered valueless by the fire which had resulted from the gun fire of the United States squadron. All the hull of the vessel below the protective deck was intact, and the reports of the divers at that time showed it to have received no damage whatever. Above the protective deck the top sides of the vessel were damaged, and the beams badly warped, and all the bulkheads, which were principally of wood, were burned out, so that above the protective deck the vessel was practically rendered valueless. The tops of the cylinders could be seen in the engine room, but on account of the water which had entered the ship from the torpedo tubes and from a hole which had been punched in her (which was afterwards found) it was impossible to get below. What examination was possible indicated at that time that no damage had been done to the engines or boilers of the ship.

10. Question. Please state whether the report of the board which is printed beginning on page 573 of the Appendix to the Report of the Bureau of Navigation, 1899, correctly represents, according to your best knowledge, the condition of the *Maria Teresa* on the date of the examination?

Answer. It does.

11. Question. Could you not except from that the hole which you refer to?

Answer. Well, this hole which was found afterwards had been punched in the ship by a rock, and I do not remember exactly as to whether that report mentioned that or not; but if it did not, of course it should be excepted.

12. Question. Did you consider the vessel a vessel capable of being raised and saved?

Answer. I did, and all the members of the board also had that same opinion.

13. Question. How soon were any steps taken toward saving her?

Answer. The board in its report recommended that it was advisable to take steps to prevent the vessel's being further damaged, and I can not state positively the date, but I know it was before the *New York* came north, and I think, to the best of my recollection, it was along the latter part of July.

14. Question. What was done?

Answer. The vessel was secured forward with lines to the shore, and there were anchors laid out aft with chains and hawsers to the vessel, the idea being to prevent her forging further on the beach, and also to prevent her being carried off in case heavy weather should come on to increase the tide.

15. Question. Can you state whether these measures were efficient for their purpose?

Answer. I should say they were efficient from the fact that the vessel was prevented from being damaged further, so that she was afterwards hauled off and partly repaired.

16. Question. Have you made any estimate of the value of the *Teresa* as she lay on the beach after the battle?

Answer. I have.

17. Question. Will you please state in detail your estimate of that value?

Answer. My authority for these different estimates are records and letters I have received from the Bureau of Construction and Repair at Washington, and from the different publications which have been issued by the Office of Naval Intelligence, Navy Department, from time to time, dating before and since the *Maria Teresa* was built. From these, and from the condition in which I saw the ship after the battle, I estimate the under-water body of the *Teresa*, including the protective deck and the hull, exclusive of the armor, as $500,000. The ship had 1,000 tons of armor placed on her when she was built, which was in place and intact at this inspection and cost when she was built about $400 a ton, making the armor worth $400,000. The engines of the *Teresa* were so built that she should make 20 knots with forced draft and 18 knots under natural draft. They were twin-screw, triple-expansion engines of 13,000 horsepower. When new I estimate they were worth $800,000. As she lay on the beach, with her engines under the water, and possible corrosion resulting from salt water on the different working parts, and, considering the time they had been used, I placed their value at $400,000. The superstructure was warped and destroyed by fire and valueless save for old metal. Two 28 cm. guns in the turrets were in almost perfect condition, and worth $50,000 each. Her 10–14 cm. guns were Hotoria B. L. R. guns, and were worth, I should say, about $15,000. Many of them had the breechblocks thrown overboard. Her equipment, such as boat tackles, masts, anchor gear, etc., was practically destroyed. This makes a total value of $1,415,000.

18. Question. Please state what repairs would have been required upon the various parts of the vessel to make them serviceable.

Answer. The under-water body of the vessel would have needed a thorough cleaning to rid her of the dirt, slime, and decomposed bodies inside; her armor needed no repairs. Her protective deck was in such shape that no extensive repairs were needed, but possibly here and there some slight attention might have been required. Her turrets and the two guns in them were intact. All of the 14 cm. guns, except two, needed breechblocks. Her engines needed a complete cleaning and oiling, but only in the same degree as any vessel's engines would need such attention which had been on the bottom with them entirely under water.

That they were not badly or seriously damaged was shown by the fact that the vessel was afterwards moved with them, and the same may be said of the boilers. Steam was afterwards gotten up on the boilers and they were used to move the ship. The repairs above the protective deck would necessitate two new decks, a complete superstructure, and an outfit of boats, two masts, repairs to the top side plating of the ship, and all equipment, such as anchor gear, tackles, etc. All woodwork and fittings for the living spaces of the ship—in fact, she would practically have to be rebuilt above the protective deck.

19. Question. Have you made any estimate of the cost of such repairs?

Answer. The original cost of the vessel, in round numbers, was $3,000,000, and she was 8 years old in 1898. I should estimate that as she came out of the harbor of Santiago on the morning of the 3d of July that she was worth $2,500,000, and that the expense of placing the ship in that same condition would be $1,000,000.

20. Question. What would have been the relative amounts of the cost of removing the old material and the value of the old material?

Answer. I should say that the value of the old material would about defray the expense of removing it.

21. Question. From your knowledge of the condition of the *Teresa* and her position, and the difficulties to be encountered in raising her, what would you consider a fair compensation for wrecking the vessel?

Answer. Well, I am not conversant with the contracts that are actually entered into by companies for wrecking vessels, but, from my knowledge of the conditions which existed and the condition of the ship, I should say that $100,000 would be a fair compensation.

22. Question. Can you state whether repairs upon the vessel capable of making her seaworthy and able to go as far as Norfolk Navy-Yard could have been made at Guantanamo?

Answer. Yes; they could have been made, and were made as evidenced by the fact she was repaired and started north.

23. Question. When the complete repairs on this vessel, which you estimate at $1,000,000, had been completed, would she have been a serviceable vessel for the United States Navy?

Answer. Yes; she would.

24. Question. Can you state for what service she would have been particularly adapted?

Answer. That of an armored cruiser in the United States Navy.

25. Question. Have you had experience on other boards besides this special board of inspection wherein you had to make estimates involving construction or repairs?

Answer. Once, in 1896, I was a member of a board of which Capt. P. F. Harrington was president, to make estimates on repairs on the United States cruiser *Brooklyn*. The amounts involved in the estimates were as much as $50,000 in different items. That is the only time.

26. Question. Does the general education and experience of a naval officer give him any information, and if so what, in regard to repairs and their cost?

Answer. Yes; in a general way, a naval officer has a knowledge of the construction of ships and from observation in navy-yards and different private shipbuilding plants, gets a general education as to the cost of the different parts that go to make up a vessel.

Cross-examination by Mr. BINNEY:

1. Cross-question. You did not have an opportunity to inspect the *Teresa* again after she had been floated?

Answer. I did not.

2. Cross-question. How do you compute the $500,000 which you have given us as the value of the under-water body of the *Teresa*, including the protective deck, but excluding armor?

Answer. I estimated that to be the value of those parts of the ship from taking the total value of the vessel and deducting values of the different parts as estimated by the naval constructors in the United States Navy, and from the opinions of several other constructors in the Navy. I referred the case to them for a professional opinion.

3. Cross question. Then this estimate of yours is based on the opinions of other persons?

Answer. On the opinions of other persons who are experts. I should add that my own individual opinion was naturally taken into consideration first and the other used to corroborate what I had thought.

4. Cross-question. Do you mean that you independently reached these precise figures in your own mind before you had consulted these other gentlemen?

Answer. No.

5. Cross-question. Had you reached any figures?

Answer. Yes; I had reached other figures and had referred to these experts in order to verify, in a way, my individual opinion.

6. Cross-question. About what were the figures which you had reached in the exercise of your individual opinion as far as you now recollect?

Answer. My original figures were between $450,000 and $500,000 for the under-water body of the ship without the armor and including the protective deck. The value of the armor which I gave was taken from the amount put on the vessel when she was built as obtained from a copy of the contract entered into by the Spanish Government with the English firm which built the ship and the value of armor per ton at the time the ship was built. The value of the engines was estimated on the basis that a horsepower is worth about $60. In estimating the value of an engine the horsepower may be taken at about $60, and she was built to make 13,000 horsepower, and they had been used eight years and were, at the time I inspected the ship, under water. I therefore estimated that they would be worth, at that time, $400,000, or one-half of the original cost. The only matter which I referred to the experts was the value of the under-water body.

7. Cross-question. Your inspection of the vessel did not enable you to learn anything as to the character of the drainage and ventilation plant, did it?

Answer. It did not.

8. Cross-question. In computing the value of the vessel, have you assumed that the drainage and ventilation plant was up to the United States standard of the year 1898?

Answer. No; but from the reports of Captain Harris, in which he states that with some repairs to the drainage plant and the pumps they were found to work fairly well, I have considered that the plant had some value and was not destroyed.

9. Cross-question. Have you taken into account, in your valuation, the fact that this plant may have been inferior to what was on vessels of the United States Navy in 1898?

Answer. No; I have not.

10. Cross-question. What was the character of the armor on the *Teresa*?

Answer. It was compound armor.

11. Cross-question. Was it such armor as was being put on vessels of the United States Navy in 1898?

Answer. No; not altogether. Our armor at that time was harveyized steel armor, and this armor on the *Teresa* was an English armor known as compound armor, and was made along about 1890. The same general idea in view of having a face-hardened armor, but not exactly the same thing.

12. Cross-question. Is it not a fact that if the Navy Department had been building or repairing a vessel in 1898, and it became necessary to procure armor for her, an armor of the character that was on the *Maria Teresa* would not have been selected?

Answer. Yes; I can not say that it is a fact, but it is my opinion that it would not have been selected, but it would not have been selected for the reason that we could supply our own armor at home.

13. Cross-question. Is it a fact that harveyized steel armor is considered to-day, and was considered in 1898, to be decidedly superior to the armor that was on the *Teresa*?

Answer. I think so.

14. Cross-question. In valuing the armor of the *Teresa* as she lay off the coast of Cuba at $400,000, as I believe you have done, did you take into account the fact that it was not such armor as would have been put on a vessel of the United States Navy at that time?

Answer. Yes; but I also considered the fact that it was in place on the ship, and although it might not be worth exactly the same per ton as our own armor at that time, the fact that it was in place on the ship would make it so.

15. Cross-question. In giving your estimate of $100,000 for the work of floating the *Teresa* and repairing her sufficiently to enable her to go to a port of the United States for permanent repairs, had you any knowledge of the amount actually paid the wrecking company for such work on this vessel?

Answer. Yes; I formed my opinion from the time it took them to get the ship off and start her north and the repairs they made on her. I stated in my reply to a question from Mr. King that I was not conversant with contracts ordinarily entered into with wrecking companies, so my estimate of $100,000 is based upon what actually did happen.

16. Cross-question. It appears from the record in this case that the Bureau of Supplies and Accounts have computed the amount actually paid to the Merritt & Chapman Derrick and Wrecking Company for their work in floating the vessel, in making certain repairs on her, and in bringing her north up to the point where she was abandoned, as $188,673.90. Do you mean to be understood as stating that the excess of this amount over $100,000 was unnecessary?

Answer. I won't say unnecessary, but I am of the opinion that work was greatly delayed or neglected at certain times while the wrecking company was engaged on the ship, and that they attempted to pull her

off and found a hole was punched in her bottom, admitted their mistake and commenced again, and in this was lengthened the time (I do not say intentionally) so that this may account in a measure for the excess over the estimate I have made.

17. Cross-question. You were not present during the time of these wrecking operations?

Answer. I was present on one occasion after they had commenced work when we sent a large working party to the *Teresa* and transported her chains and anchors from forward aft in order to lighten the vessel forward. As I recollect, this was, I should say, in the early part of August—about the 1st of August. My statement in regard to the delay in the work is based entirely upon official telegrams and letters in the Appendix to the Report of the Chief of the Bureau of Navigation on the operations of the war.

18. Cross-question. You have never had experience in operations of this kind yourself?

Answer. Never.

19. Cross-question. During the time that you were actually engaged in inspecting the *Teresa* your main attention was given to considering the effect of the gun fire, was it not?

Answer. Yes.

20. Cross-question. You were not at that time thinking about the cost of repairs, etc., were you?

Answer. Yes; the orders of the board were intended that they should consider the values of the vessels from a point of view of saving them, and attention was called to the *Teresa* especially.

21. Cross-question. But as a member of a subcommittee of this board your attention was given particularly to this matter of the effect of gun fire?

Answer. Yes; but in observing the effect of gun fire I had to go both outside and inside of the ship in order to see the effect of the explosion of the shells, as well as to plot the positions of the holes made by the shells.

22. Cross-question. You have stated that your opinion and the opinion of the board was that the *Teresa* was capable of being raised and saved. Both you and the entire board had the same opinion in regard to the *Colon*, had you not?

Answer. I do not recollect exactly whether the entire board was of that opinion or not. I know the majority of the board were of the opinion that the *Colon* could have been saved, and I personally never have changed my opinion that she could have been saved. I visited her almost a year after she was wrecked and she seemed at that time to be perfectly strong to withstand the stress that might be put upon her in raising her.

23. Cross-question. What were these letters from the Bureau of Construction and Repair, which you state were a source of information to you in making your estimates?

Answer. They were personal letters from friends of mine in the construction corps.

24. Cross-question. You have stated, I believe, that at a cost of about $1,000,000 the *Teresa* could have been put in substantially the same condition as she was before the fight began. Do you understand that that

condition was equal to the condition of a vessel of the United States Navy of the same general character.

Answer. Well, not entirely so, because I consider that our vessels are kept in as good or better condition than those of any other nation; but all men-of-war are kept in a very good condition, because they have large crews to keep them clean and artisans of all sorts to make repairs, and because a man-of-war unless she is in very good condition is of very little use. I was on board the *Maria Teresa* in the harbor of New York in 1893, when she was here for the naval review, and at that time I was attached to the *Chicago*. I did not consider her to be as clean as the *Chicago*, but her condition otherwise I thought at that time was quite equal to that of the *Chicago*, which was at that time one of our best ships.

25. Cross-question. In 1893 the *Teresa* had seen very little service.

Answer. Yes.

26. Cross-question. Was not the *Teresa* in some respects of a type which had been improved upon by 1898?

Answer. Yes; but this is a natural sequence of a development which is being carried on in every navy. We have the same thing in our own Navy.

27. Cross-question. In estimating the value of the *Teresa* in 1898, have you taken into account the fact that her type had been improved upon since she was built?

Answer. No; I did not take that into account because I considered ships like the *Brooklyn* and *New York* as being ships of the same type. The *Brooklyn* is later than the *New York*, and is supposed to be an improvement on the *New York* in regard to speed and in regard to battery, because her gun-deck battery is heavier than that of the *New York;* but I do not consider that that takes away any of the value of the *New York;* that she is worth as much to-day as the day she was built, from that point of view.

28. Cross-question. In making your estimate of the value of the *Teresa*, as she lay off the coast of Cuba, have you taken into account whether or not she could have been sold to outside parties as she lay there?

Answer. No; I never considered the ship from that point of view at all.

29. Cross-question. You do not know, then, whether it would have been possible to have sold her to outside parties for any sum at all approaching the valuation which you put upon her?

Answer. No; I do not know.

30. Cross-question. What inspection did you personally make of the guns?

Answer. I went inside the turrets and made a personal inspection by opening breechblocks and working levers, etc., in order to see that they were in working order. I made as much of an inspection as it was possible for me to make without having a crew to manipulate the guns; and of the other guns I inspected them by trying to open the breechblocks of the two that had them still in them and by testing the hydraulic recoil system of same. They had a peculiar arrangement for pumping liquid into the cylinders. Of course there were no measurements taken to see if the fire had damaged the guns in that way to cause them to expand, or anything of that sort. It was not a detailed inspection.

31. Cross-question. If you had been on a board to determine whether or not the United States should purchase those guns, and, if so, at what price, you would have made a more careful inspection, would you not?

Answer. I possibly would.

32. Cross-question. In making your valuation of the guns, did you value them for use in actual service on board vessels of war of the United States?

Answer. I did; the large guns—28cm. guns.

33. Cross-question. How about the smaller guns, which you state were worth $15,000?

Answer. They were saved more from a point of view of trophies and the possibility of their being recast.

34. Cross-question. If cast over again their value would not have exceeded that of scrap metal, would it?

Answer. Not from the point of view of gun making, but one might say from a sentimental point of view.

35. Cross-question. Then, aside from a sentiment, these smaller guns would only have been worth their value as scrap metal?

Answer. No; I would not say that. The two guns which still had their breechblocks in them might have been placed in a useful condition again. We find in gun making in this country that our guns when finished ready to fire cost, say, 50 cents a pound, so that a 50-ton gun would cost about $50,000, and the other guns corresponding to these two guns that had their breechblocks—I do not recollect exactly what the tonnage is of a 14cm. gun, but comparing them to our 5-inch guns in the service I should say that they were about 6-ton guns—so that the two of them, with the rest thrown in, I consider to be worth about $15,000.

36. Cross-question. Then your valuation contemplated the use of the two 28cm. guns and two 14cm. guns in actual service in the United States Navy?

Answer. Yes.

37. Cross-question. Without change of caliber?

Answer. Yes.

38. Cross-question. These guns would have been what one might call odd calibers in the Navy?

Answer. Yes.

39. Cross-question. Since the ordnance of the types of the present day came into use, has the United States acquired for use any guns of such large calibers as these, other than of standard calibers?

Answer. None of the 14 and 28cm., but in an emergency we bought two ships, the *New Orleans* and the *Albany*, for which special ammunition had to be purchased abroad, as they had guns entirely different from our standard calibers.

40. Cross-question. But such purchase of guns would never be made except in a case of emergency?

Answer. I think not.

41. Cross-question. In estimating the value of these guns, have you considered whether or not they could have been sold to outside parties for the figures which you have figured them at?

Answer. No; I have not.

42. Cross-question. You have no means of forming any opinion on that subject, have you?

Answer. No; I have not.

Redirect examination by Mr. KING:

1. Redirect question. Have you taken into consideration the inferiority of drainage and ventilation plant on the *Maria Teresa* to the standard in the United States Navy? If such inferiority existed, would you make on that account a material alteration in your estimate?

Answer. No; because the ship was built in England, and therefore was not of inferior workmanship in any way.

2. Redirect question. Then, do you wish it understood that you would not consider the drainage and ventilation plant inferior to those that would have been put on vessels of the United States Navy at the time when these vessels were built?

Answer. Yes.

3. Redirect question. Please state whether you consider the armor which was on the *Maria Teresa* as serviceable armor.

Answer. Yes; I do. There were evidences of shells having struck it and having left very slight marks, if any.

4. Redirect question. Is there any vessel in the United States Navy the armor of which is fairly comparable to that of the *Maria Teresa* from a standpoint of actual protective service?

Answer. I can not answer that, because I have not a knowledge of the thickness and conditions of our different ships in regard to armor to make a comparison worth anything.

5. Redirect question. If the repairs on the *Maria Teresa* were completed at the expense of $1,000,000, as you have estimated, what vessel in the United States Navy would you consider the restored *Maria Teresa* the nearest parallel in utility and value?

Answer. I would consider that she would approach more nearly the *New York* than any other ship.

By the NOTARY:

Question. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. Nothing occurs to me at this time.

Sworn to and subscribed before me this 27th day of February, 1901.

WILLIAM J. LEONARD,
Notary Public No. 51.

STATE OF NEW YORK, *County of Kings, ss:*

I, William J. Leonard, a notary public duly appointed for the county of Kings, do hereby certify that on the 18th day of February, in the year of our Lord 1901, I was attended by William B. King, esq., of counsel for the libellant, and by Charles C. Binney, esq., of counsel for the United States, and by the witnesses, who were of sound mind and lawful

age, and the witnesses were by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions made by them were reduced to writing by the hand of Albert M. Eberly, stenographer, from their statement, and they, after carefully reading the same, subscribed the same after having made the alterations indicated thereon.

And I do further certify that I am not of counsel nor attorney for either of the parties in the depositions and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand this 27th day of February, in the year of our Lord 1901.

WILLIAM J. LEONARD,
Notary Public No. 51.

Deposition of Naval Constructor R. P. Hobson, U. S. N., for libellant.

Met at Washington, D. C., March 2, 1901, pursuant to an agreement of counsel.

Present, James H. Hayden, esq., of counsel for the libellant; Charles C. Binney, esq., special attorney for the United States, and William B. King, esq., of counsel for certain captors, and Louis Beyer, jr., esq., commissioner.

RICHMOND P. HOBSON, a witness produced on the part of the libellant, being duly sworn, deposes and says, in answer to interrogatories propounded to him by Mr. Hayden, of counsel for the libellant, as follows:

1. Question. Please state your name and rank.

Answer. Richmond P. Hobson, naval constructor, United States Navy.

2. Question. How long have you been in the naval service, and, in general, what have been your duties?

Answer. I have been in the naval service since May 21, 1885. My duties have been as follows: The course at the Naval Academy and about eighteen months of the two years' cruise; then three years' duty in post-graduate studies in the French national schools, with a view to entering the construction corps; served as assistant naval constructor from July 1, 1891, till June 23, 1898, and have served as naval constructor since June 23, 1898. The service as assistant naval constructor comprised duty at the Bureau of Construction and Repair, Navy Department; at the New York Navy-Yard as assistant to the naval constructor; duty at the Newport News Shipbuilding and Dry Dock Company as assistant superintending constructor; duty upon the *New York* as fleet naval constructor; duty at the Naval Academy, in charge of the post-graduate course in shipbuilding and naval architecture, service with the fleet at Key West and during the war. The service as naval constructor comprises duty in connection with the wrecking operations of the Spanish vessels destroyed in the battle of Santiago, duty superintending the reconstruction at Hongkong of vessels raised in Manila Bay.

3. Question. Where were you during the engagement of July 3, 1898, off Santiago?

Answer. I was in prison in the city of Santiago.

4. Question. Had you seen the Spanish vessel of war *Infanta Maria Teresa* prior to that engagement?

Answer. Yes; I had seen them all from a distance—all the Spanish vessels from a distance.

5. Question. When did you first see the *Teresa* after the engagement?

Answer. I saw her next on the morning of July 7.

6. Question. You visited her as a member of a board of inspection appointed by Rear-Admiral Sampson on July 6, 1898?

Answer. Yes.

7. Question. What did you find to be her condition at the time of that visit and subsequent visits?

Answer. My particular examination of this vessel, as of the others, was for the hull. I was appointed a subcommittee to examine the hull and structure of the vessel, to report on these and the chances of salvage at that time, so that my examination was specially directed to these features. The vessel's structure up to and including the protective deck was intact, as far as examination could extend, including examination by divers outside. Above the protective deck all the woodwork and inflammable material had been burned away, and the heat of the conflagration had warped and distorted the contiguous metal work so that the beams, particularly in the waist and amidship parts of the ship where there was no metal flat under the wood, were very much distorted in many places. The side plating, deck stringers, and plating forward and aft, the deck plating under the wood flat, was, generally speaking, buckled and wavy, and the structures in the neighborhood of weights in most cases collapsed or subsided to a more or less degree, except in the case of the turrets, which received their principal support from the protective deck and structure beneath. The fittings and small work, including the small artillery, were practically destroyed. The 14-cm. and 28-cm. guns were more or less intact. Further examination in the course of the wrecking operations and when the ship was pumped out and in course of repairs preparatory to coming north, showed that the propelling machinery was practically intact, including the main engines, boilers, and principal auxiliary machinery. The structure fore and aft below the protective deck was intact, except in the region below the forward turret, which I call the forward magazine section, where a bowlder had penetrated the bottom just below the turn of the bilge, making a rupture, say, roughly, of 3 feet in diameter, and a tear with a small opening extending from this section into the forward boiler section. The small fittings throughout were considerably impaired, and in many cases destroyed by the action of corrosion, but the large pieces, both of the propelling machinery and the whole structure, were but slightly damaged. The armor, in all cases, together with its supports and attending structure, was intact. The piping was partially injured by the corrosion, including the cast-iron piping, but the main piping, copper, brass, and the bronzes, were practically intact. I think that covers all the features.

8. Question. After your first inspection of the *Teresa* as a member of the board, what conclusion did you reach with regard to her salvability? In answering, please state your reasons for your conclusion.

Answer. I concluded, and reported to the board accordingly, that she was eminently a salvable ship, and that the vessel as a structure was practically intact; that any damage that would impair the vessel's salvability, including the chances of raising her and of navigating her to the United States, would only be local and would admit of temporary, efficient repairs.

9. Question. What, if anything, was done at or about the time of your first inspection of the *Teresa* with a view to protecting her against further injury from the elements or otherwise?

Answer. The board recommended that cables be gotten out to prevent the vessel from going farther on the beach and from sliding off into deeper water. These were subsequently gotten out, though I was not connected with the operation.

10. Question. What, if anything, in addition to the securing of the vessel by cables, could have been done to insure her safety prior to wrecking or salving operations?

Answer. I do not think any other precautions were practicable.

11. Question. Please state, if you are familiar with them, what steps, if any, were taken to recover the vessel, by whom they were taken, and in what manner; that is to say, give her history from July 7, 1898, until she was taken to Guantanamo Bay.

Answer. Shortly after the completion of the work of the board, the wrecking tug *I. J. Merritt*, with appliances, under the command of Captain Sharp, went alongside and began wrecking operations. I was then ordered north in connection with preparations for general wrecking operations, particularly proposed operations for the *Christobal Colon*, and arrived back on the scene August 28, when an inspection showed that pumps of fairly large capacity had been installed in various parts of the ship and were in working condition; that efforts had been made without success to remove the bowlder which was found to have penetrated the bottom. For about a week I allowed the wrecking master's method of operation to continue, while I learned the condition of the ship, including examination, in the diving suit, of the ship's bottom and the bowlder. While I permitted the method to proceed, Captain Sharp pumped down twice, and each time, after the water had reached a certain level and the vessel showed signs of life, suddenly she would fill again throughout and with such rapidity that the pumps were of no avail. After about a week or ten days and when the second pumping down ended as mentioned, I told Captain Sharp that the method would have to be modified. He demurred, and for several days there were difficulties in having my directions carried out, and I reported the matter to Admiral Watson and recommended that I be placed formally and by written order from him in complete charge, and that Captain Sharp be relieved if he would not carry out completely my instructions. The Admiral immediately issued orders to this effect, and Captain Sharp was sent back to the United States, and Captain Chittenden, who had been in command of an expedition sent to the *Colon*, was now put in charge, under me, of the operations on the *Teresa*, and both expeditions—that is, the whole wrecking force down there—was placed upon the *Teresa*. Additional pumps were installed, and Captain Chittenden began at once to carry out my instructions to attach the ship in detail by subdividing her into seven main sections—the after section, extending to the after magazines; the after-magazine section, extending from the after section to the engine room, then going forward into the engine-room section, the after boiler section, the forward boiler section; forward magazine section, and forward section. We then concentrated pumping power on the after section farthest removed from the injury, pumped it dry, entered and

stopped all leaks into this section, then filled it again; then similarly attacked the after magazine section and, after considerable difficulty, succeeded in pumping it dry and stopping all leaks into this section, and then filled it again and attacked successively, in turn, the engine-room section, the after boiler section, the forward boiler section, and the forward section, in the same manner, making the main bulkheads and all openings tight as we proceeded and filling again when the compartments were tight. We then concentrated upon the forward magazine section over the openings in the hull, and succeeded in mastering the buoyancy down to the platform deck, shoring down all coverings from this deck. During this time the divers were kept constantly occupied in endeavors to close, as far as practicable from the outside, the holes in the bottom. Finally, on September 23, we pumped down all the sections simultaneously, and the vessel rose and floated. We hauled her off about 50 feet and put divers over the side to close, as far as they could temporarily, the hole left by the bowlder, and then proceeded to Guantanamo under the tow of the United States tug *Potomac* and the wrecking tug *Merritt*.

12. Question. What, if anything, had you to do with further repairs made upon the *Teresa* at Guantanamo?

Answer. I outlined to Captain Chittenden and to the senior officer present what repairs, in my opinion, were necessary prior to taking the vessel north. These principal repairs were, first, the effectual covering of the holes in the bottom from the outside; second, the decking over of the upper deck with a steeply inclined deck to shed water; third, the getting of the engines and boilers in as efficient a condition as possible to assist in towing north; fourth, the lashing of the two turrets by a chain cable stretched between them, frapped in the middle. I went into the details of these operations, except in the case of the engines and boilers, and was satisfied with them and the methods adopted to carry them out, and then left this vessel to start operations on the *Cristobal Colon*.

13. Question. What was the structural strength of the *Teresa* laterally and longitudinally when you conveyed her from the beach west of Santiago to Guantanamo Bay?

Answer. Her strength as a longitudinal girder was somewhat impaired by the conflagration in warping the upper hull plating and deck stringers. This injury, however, was not of any serious moment, particularly after the vessel was lightened, as she had been under my directions, by stripping off all movable weights, including the 14-centimeter guns and all ammunition in the magazines that could be removed, making altogether probably more than 1,500 tons, and leaving in the ends of the ship as weights only the main turrets. In such condition the longitudinal strength would be large, even without the superstructure. The transverse girder of the ship was more or less impaired by the distortion of the upper deck beams. This injury, however, was of no serious consequence, because, as a transverse girder, this ship, and practically all ships, are very strong—stronger than is required for the purposes of navigation—and as a transverse girder the ship would be solid without the superstructure. The movements in the superstructure were expected to take place under stress of heavy seas, and were expected to be more or less pronounced, and the stretching of chain cables between the two

turrets was designed to keep this movement in less pronounced bounds. Any movement, however, in these parts would not signify structural weakness.

14. Question. Were the repairs which you outlined to Captain Chittenden properly made while the *Teresa* was at Guantanamo?

Answer. I did not see the completion of these repairs, as I was ordered north in connection with the *Colon* operations on October 16. At this date, however, repairs were well advanced and, as far as I could judge, had been efficiently and were being efficiently done.

15. Question. What have you to say with regard to the seaworthiness of the *Teresa* upon the completion of the repairs which you have described?

Answer. In my opinion the vessel as a floating object was in fully seaworthy condition; that as a structure she was stronger and more buoyant than at any time in the period of her loaded life; that she could navigate any waters in any known conditions of sea and weather. The features of weakness were such as to be under easy control. The principal handicap was the use of only one engine, and the principal precaution to be taken would be to remove the comparatively small quantities of water that would be expected to enter through the seams and around the rivet heads when the sea would rise on the ship's side, the heat of conflagration having naturally disturbed the calking. A very small pumping force—even hand pumps—would be able to take care of such leaks, since they were all above the protective deck, the protective deck itself being intact, and the subdivision being developed above the protective deck limiting the space open to flooding in this way.

16. Question. Are you familiar with the circumstances of the *Teresa's* voyage northward after leaving Guantanamo on October 29, 1898?

Answer. After going north I did not again see the *Teresa* until she was ashore on Cat Island, when I went down in the *Vulcan* to examine her with a view to saving her again, if practicable.

17. Question. Are you familiar with the record of the court of inquiry held to investigate the loss of the *Teresa?*

Answer. No; I am not. I did not appear before this court.

18. Question. What was the condition of the *Teresa* when you examined her on Cat Island.

Answer. The vessel was floating practically at her normal-load water line, broadside on a reef running parallel to the ship. Examination showed that as a structure she had remained practically intact; that the repairs to ruptures in the hull under water were also intact at the time when she struck the reef, the wire cables girdling the ship to assist in holding the patch having only been sawed in two by the reef. The wood and as much brass work as was within reach had been removed by the natives. Below the protective deck the ship's bottom, practically throughout its length—the principal part of its length—had been penetrated by the reef as far in as the inner bottom and beyond; had raised the boilers and engines and in places arched the protective deck, so that the central portions of the ship over the reef, and supported by the reef, were stationary; while the hull of the ship, under the force of the swells, would oscillate around these fixed portions, showing that the ship was practically disintegrated, and there was no chance to save her.

19. Question. Commander Harris, who had command of the *Teresa* after she left Guantanamo for Norfolk, has testified that in the gale during which she was abandoned there was a perceptible lateral movement of certain parts of the ship. From your knowledge of her condition when she left Santiago, can you explain the cause or significance of this?

Answer. The cause was undoubtedly the compressive force of the waves as they rose on the ship's side, exerted through the ship's side upon the upper deck beams, which were more or less distorted and which would be expected naturally to take on a certain amount of movement; but each time such movement would end by return to the former condition, and such movement would naturally be expected, and was of no material significance as bearing upon the vessel's strength.

20. Question. So far as her condition was concerned, after the engagement off Santiago, how did the *Teresa* compare with the Spanish gunboats recovered in Manila Bay?

Answer. The conditions were closely similar, the main difference being that the gunboats had raised poops and forecastles, while the *Teresa* had a flush upper deck. The gunboats were submerged down to the main deck or first complete upper deck, while the *Teresa* was only practically at her load-water line. The upper portions of the gunboats had been burned before sinking in a manner very similar to that of the *Teresa*, and the phenomena of distorted and sunken deck beams and warped and wavy plates were very similar. The portions of the gunboats below the protective decks were practically intact, with this difference, that they had been submerged more than twice as long as the similar portions of the *Teresa*.

21. Question. To what extent are you familiar with the cost of naval vessels of the *Teresa's* class in 1892 and 1898?

Answer. I am familiar in a general professional way with the cost of such objects, and should say roughly that in 1890 per ton such a vessel would be worth probably from $400 to $450; in 1898 there would be modifications because the armor would be different.

22. Question. What, in your opinion, would have been the cost of a vessel like the *Teresa*, if built in Europe in 1898, or if built in this country in that year?

Answer. I should say in either country the total cost would have been more than $3,000,000. This presumes that the armor used in 1898 would be the armor of that date.

23. Question. From your examination of the *Teresa* after the engagement off Santiago, can you say whether she had deteriorated in the six years succeeding her launching; and if so, to what extent?

Answer. I should say, from my examination of the vessel and from a comparison with the condition of the gunboats at Manila which had passed through similar service (the gunboats at Hongkong referred to), that the deterioration was not very marked; that it would correspond to the condition of a vessel that had been on, perhaps, a long cruise before having a general overhauling.

24. Question. Can you give approximately the percentage of such deterioration?

Answer. I should say generally that the deterioration of the hull weights was very small; that the deterioration of the armor was nil;

that the deterioration of the ordnance weights was very small; that the deterioration of the propelling machinery was probably not more than 15 per cent.

25. Question. What, in your opinion, was the value of the *Teresa* as she lay on the beach west of Santiago after the engagement? In making this answer, please state your reasons fully.

Answer. I have made an estimate of the value of the vessel at this time as follows by three methods: First, by examination of the features in detail; second, by consideration of the vessel as a whole; third, by comparing the vessel with the three Manila gunboats. The first method gives a total value of $1,647,000, distributed as follows: Hull weights, $481,000; machinery, $676,000; armor, $350,000; armament, $140,000. These figures are arrived at as follows: For a vessel of this class the hull weights, including hull fittings and other accessories, would be about 35 per cent of the displacement, or about 2,450 tons. From this original weight deductions should be made as follows: Wood flat on upper deck burned away, 150 tons; wood fittings and other fittings of upper and main decks, burned or destroyed, 300 tons; small fittings below protective deck destroyed or injured so as to have to be replaced, on account of corrosion, 150 tons; total of deduction, 600 tons, leaving hull weights, 1,850 tons. The original cost of such weights was about $350 per ton. The total deterioration below the protective deck I estimate at 20 per cent including the deterioration during previous service and the deterioration due to submersion. The deterioration above the protective deck I estimate at 60 per cent, including deterioration of previous service and injury by fire. Taking the latter weights, or weights above the protective deck, as one-sixth of the weights below the protective deck, the mean deterioration would be 25.7 per cent—say 25 per cent; leaving the remaining value of each ton $262.50—say $260 per ton. With a total weight of 1,850 tons, this gives $481,000.

It may be remarked that there is no exact information on these weights in the Bureau of Naval Intelligence or available anywhere, so I have worked from the *Orlando*, the British armored cruiser which was the prototype upon which were built these cruisers, and our nearest analogies, which are the old *Maine* and the *Brooklyn*.

For machinery weights, taken on the basis of the speed of this vessel and the type, say at 18 per cent of the total displacement, would give 1,260 tons; taken on the basis of producing 13,500 horsepower, taken at 230 pounds per horsepower, would give 1,380 tons. The mean of these would be 1,320 tons—say 1,300 tons for machinery weights. The original cost of such machinery was probably in the neighborhood of $650 per ton. The deterioration, including service, I estimate at 20 per cent, as follows: Deterioration to main machinery, including deterioration in service and under the corrosion of submersion, at 15 per cent; deterioration of auxiliary machinery for similar reasons, 50 per cent, and judging from the deterioration found in similar cases in Manila. In the case of the gunboats, where we could take out large pieces, I found that the corrosion was practically immaterial, that the surface simply skimmed off, left the metallic surface beneath. The remaining value of the machinery, with such a deduction, would be about $520 per ton, and, taking the total weight at 1,300 tons, give $676,000.

For the armor in this class of vessel—and judging from its extent I should say that it amounted to 20 per cent of the tonnage, or 1,400 tons—the original value was about $415 per ton, which was the value at which Campbell compound armor was selling at that time. The deterioration, taking into account its tendency to obsoleteness of armor, the slight corrosion, etc., I have estimated at 40 per cent., which I think is a large estimate. That is principally based on the fact that there has been, not a revolution in armor, but a very large progress in armor. I estimate the deterioration at 40 per cent, leaving a remaining value of $250 per ton, giving, for the 1,400 tons, about $350,000.

Similarly, taking the armament of this vessel, judged from the guns themselves, at 7 per cent, would give 490 tons. Of this, part was destroyed, including, practically, all the secondary batteries, and many fittings around the 14 cm. guns and their ammunition services, which I estimate at 140 tons, leaving, say, 350 tons. The original cost of this material was probably in the neighborhood of $800 per ton. The deterioration I estimate at 50 per cent, which, I think, is large and intended to cover all injury by fire, all tendency to obsoleteness, and all wear in service, because the 14 cm. and 28 cm. guns are of the improved long type, which gives a total value of the 350 tons, at $400 a ton, of $140,000, the sums of all these features making $1,647,000.

By the second method I reason as follows: The original displacement was 7,000 tons. I have taken the original cost of this vessel at $3,000,000. It was doubtless considerably larger than this, the actual cost in almost all cases largely exceeding the contract cost, being paid for under the form of "extras." Taken at three million, it cost $420 per ton. I estimate that the total loss of weight of the vessel as she floated was 1,000 tons burned off and destroyed, or, say, roughly, 6,000 tons remaining. I estimate broadly that the mean total deterioration as the vessel lay on the beach was 40 per cent, giving her $250 per ton. Six thousand tons, at $250 per ton, gives $1,500,000, which I think is on the side of a less value rather than a large value, 40 per cent of deterioration being a large allowance.

By the third method, in comparison with the Manila gunboats, the general mean percentage of deterioriation in the *Teresa* I estimate as somewhat less than that of the gunboats. There was in the *Teresa* a larger percentage of armor which was not deteriorated at all. In the *Teresa* the principal armament was but slightly deteriorated, and in the gunboats it was destroyed. The conditions of the machinery were very similar. The conditions of the hull put the *Teresa* at an advantage, as a smaller portion of her hull was immersed and the length of immersion was shorter. The cost of the repairs of the gunboats, independent of the cost of raising, was about $625,000 Mexican. The value of the gunboats, as estimated by the board of appraisal, after repairs, was about $1,300,000 Mexican, and it was found that such extensive repairs were really equivalent to an extended general overhauling of the vessel, and that she was better after the repairs than she was before she went into battle; and I estimate that this was at least 10 per cent, the speeds found on the trial trips after repairs actually exceeding the original trial speeds.

I take the value of the *Teresa* as she went out of the harbor of Santiago

at, say, 90 per cent of her estimated cost of $3,000,000, or, say, roughly, that her value was then about $2,300,000. Comparing, as explained above, the cost of putting her into as good condition as she was in coming out, at 40 per cent of the value of the vessel, or, say, $1,000,000, her remaining value on the beach, independent of salvage, would be therefore $1,700,000.

26. Question. From your knowledge of the salvage operations upon the *Teresa* and the vessel's condition, what, in your judgment, should have been the cost of her recovery and conveyance to Norfolk, Va.?

Answer. I think if the proper method of attacking the ship had been followed from the start, or after the first pumping down, that the necessary cost would have been less than $100,000.

Cross-examination by Mr. BINNEY:

1. Cross-question. It was necessary, was it not, to employ the Merritt & Chapman Derrick and Wrecking Company, or other outside parties engaged in similar business, in order to float the *Teresa*?

Answer. I should say that it was advisable to employ them at that time, as it was more expeditious and there were elements of danger in delay.

2. Cross-question. Had the fleet at hand the necessary plant and material for floating the vessel?

Answer. Not to my knowledge.

3. Cross-question. In undertaking a work of this character, presenting such difficulties as were presented in the case of the *Teresa*, a certain amount of work is necessarily experimental, is it not, as a general rule?

Answer. It is difficult at first sight to determine just what the conditions are on board almost any wreck; and in this particular case it was difficult, so that in a way it required a certain amount of work to determine what the conditions were.

4. Cross-question. And such experimental work is always likely to be partially unsuccessful, is it not?

Answer. Well, I do not know; it depends on the conditions and the experiments.

5. Cross-question. In intimating, as I understand you to do, that the proper method was not pursued altogether in the operations on the *Teresa*, is not your opinion affected by the fact that you are able now, after the work has been done, to see what mistakes were made?

Answer. No; I think not. I think my opinion was formed before the ship was hauled off, and that it was tested and was brought against the expert opinion of Captain Chittenden in various cases. In particular, the Thursday or Friday before the week in which the ship was hauled off, I remember stating to Captain Chittenden that my calculation showed that we had almost enough buoyancy to float the ship independently of the sections flooded by the rupture of the skin in the bottom, and that we ought very soon to be able to fix a date for hauling off. The captain shook his head and said, "My forty years' experience tells me that this is not the case." Then I said, "Captain, we must come to something definite; when do you think we can haul off?" and he then, after careful consideration, said positively that he estimated it would take more than five weeks—more than thirty-five days—before he could make an estimate of the time when she would be hauled off, and I remember at

the time that—not having had the forty years' experience—I was so grounded in faith in my calculations that I said to him, "Captain, the ship comes off next week," and so much so that at the moment—a half hour before we hauled off—Captain Chittenden had given up in despair, tears were running down his cheeks, and I sent him away from the ship, so that he was not on board her when we hauled off. He was on the *Senor*, the wrecking tug. I told him to go and lie down. He did not have faith up to fifteen minutes before she was floated. And not only so, but the people under him. The officer sent down from the senior officer present to inspect the ship from time to time would talk with the foremen and leading men under them and go back with gloomy reports, and these foremen and leading men all had gloomy reports.

6. Cross-question. At the time the vessel was floated you cut the cables, or some of the cables by which she was held, did you not?

Answer. Yes.

7. Cross-question. Was that before or after this display of emotion on the part of Captain Chittenden to which you have referred?

Answer. It was after; it was when we were hauling off, when she had lifted and was floating. The whole fleet was out there. I had telegraphed to Guantanamo that we would haul off at daybreak on Friday, and it was the spectacle of the fleet watching our defeat, I think, that worked on his nerves, which were very much run down. It had been very rough, hard work that we had had under the protective deck—most unsanitary. Men were ill. We could not muster one-fourth of our force at any time, using Cubans, and they would get the fevers and we had to put them ashore, and the old captain's nerves were worked on. That must be taken into account. But the fact was that my opinion was final before the ship was floated. It was conclusive. I had the most complete confidence in the result.

8. Cross-question. Do I understand you to charge negligence on the part of the wrecking company who had to do with the work as causing delay and consequently increasing the expense, or merely that they acted in accordance with their judgment, which you consider erroneous?

Answer. I am not in a position to bring any charges, whatsoever I think. I should not like to bring any charges whatsoever in one way or the other.

9. Cross-question. Then I understand that this delay, which increased the expense of the work, was due to what you consider errors of judgment on the part of the officers of the wrecking company in charge?

Answer. I consider it as due to the adoption and persistence in a method which was inadequate and erroneous, if you wish to put it that way, and was demonstrated so to be; and I could only get a change in that method by the most difficult and positive stand, in really having the one in charge removed.

10. Cross-question. Have you made any detailed computation of the amount which it would have cost to repair and rebuild the *Teresa* so as to make her a thoroughly first-class vessel in accordance with the standard of vessels of the United States Navy then in construction, but not substituting new armor.

Answer. I have made estimates of this cost, and have decided, beyond any comparison, that the method of comparison with the gunboats in

Manila was far more reliable, was the most reliable possible—the most reliable attainable—and that my estimate of $1,000,000 to put these ships in condition which would really represent what they would have been before the battle had they immediately come out of the navy-yard after an extensive overhauling. In other words, by the expenditure of a million dollars the ships would have been put in thorough and efficient condition in every feature; the machinery would all have been overhauled; all buckled or distorted plates removed and repaired, and it may be noted in connection with those plates that it is a great mistake to think that those plates that have been burned are no longer good. On the contrary, that burning was a process of annealing, and we found in the case of the gunboats that the vast bulk of all this material, both beams and plates, could go right back into place—needed no new plans and no new drawings. Their lengths were just right and the process of burning had not injured them. It is not as though iron had been burned. There is such a thing as burning iron, but the heat was not intense enough for that; they were probably heated to a low red, scarcely to a bright red, by the heat of conflagration in the intense parts, and particularly all that material, except some of the worst that they did not like to take the trouble to do, would be put into the ships after being rolled out afresh. Taking into account all this, removing every distorted plate, every distorted beam, every distorted article on board, putting it back into position accurately, overhauling all pieces of machinery, removing them and skimming them under machine tools and putting in new parts where needed, and overhauling the boilers thoroughly, putting in new tubes where needed—all this work would amount to less than $1,000,000, and then when it was through the ship would be just as though she had been turned into a navy-yard, like the New York Navy-Yard, and undergone five or six months repairs and general overhauling.

11. Cross-question. Do I understand that you think that this sum of about $1,000,000 would have repaired the ship to the full standard of vessels under construction in the United States Navy at that time, barring the fact that her general type and armor were not of the latest date?

Answer. Well, her general type is of the latest date, I should consider. Her armor is not, and the armor distribution has been changed slightly, but a ship of 20 knots—an armored cruiser of 20 knots—is most essentially up to date, and when you get it on 7,000 tons displacement you have a fine piece of work. I consider that after such repairs she would compare, for instance, with the *Brooklyn* or the *New York* after they had been thoroughly overhauled at a navy-yard preparatory to a long cruise.

12. Cross-question. Can you separate that million dollars for repairs so as to show how much you would allow for repairs to the machinery, how much to the other portions of the vessel, including equipment, and how much for ordnance?

Answer. Would you explain what you mean by equipment, if you would allow me to ask?

13. Cross-question. I assume that the word "equipment" might fairly be used to cover everything which goes to make a vessel complete for the purposes for which she is intended, but is not structural nor part of the machinery nor the ordnance.

Answer. Well, you know the bulk of that kind of material comes out of current accounts. It does not go down in the cost of a vessel.

14. Cross-question. Then please include in your statement so much of the equipment as you think properly figures in the cost of the vessel.

Answer. I should estimate that from the items to which you refer, repairs to the hull, its fittings and accessories, would be about $450,000, divided as follows: Below the protective deck on about 1,500 tons of material at about $30 a ton, equal to about $45,000. Work on material above the protective deck, say 800 tons, to be worked upon at—for demolition, or rather for taking down and removing and putting in shape—at $150 a ton, and reconstruction at $350 a ton, making $500 a ton for the upper works, or $400,000 for the portion above the protective deck, making a total of $450,000 for the hull weights; for the machinery a broad estimate of $100,000; for ordnance $50,000, and for equipment—which I interpret to mean all the anchor gear, ventilating system, fire main system, heating system, and all other detail work that is to be put in a ship, which is not included in other heads—I have estimated that at $300,000, making a total of about $900,000. These items are only approximate, and any estimate in such cases must be taken as only approximate. The best you can do is only an approximation. The equipment item might run to $350,000, dependent on how much the superintending constructor would require in the way of these conveniences and modern appliances. The ordnance item would probably run a little less than I have allowed. I do not think the hull item would be much more than I have allowed and the machinery item might be a little less.

15. Cross-question. When did you first make these various computations which you have made?

Answer. I made the computations of the value of the *Teresa* sometime last year, the early part of last year, if I remember correctly, while in Hongkong superintending the reconstruction of the gunboats for the board of appraisement, under directions to do so by the Navy Department. The figures that I have quoted to-day I have made up within the last few days, and they are the result of extensive and more or less various research, using all the information and data that I could obtain at the Navy Department. They are more detailed than my estimate made at Hongkong, but I think on broad lines the estimates may be regarded as the results of the same methods.

16. Cross-question. You have estimated that about $50,000 would be required for ordnance. Do I understand that you mean that the expenditure of that amount either in repairs or in the purchase of new material would have provided the vessel with the same armament which she originally had in substantially perfect condition?

Answer. The $50,000 includes, in this estimate, the repairs to the articles which would remain in the ship, and do not include any new material, any new ordnance pieces that might be installed; would not include the small arms and small artillery that would be replaced.

17. Cross-question. Do you mean that the turret guns and the ten 14 cm. guns, with their mounts and accessories, could have been put in substantially perfect condition for $50,000?

Answer. They could have been put in efficient condition for that

much. They could not have have been put in perfect condition, because they had had a certain amount, estimated previously, of deterioration in service. That would include all those small fittings and appliances which were destroyed or injured by the conflagration.

18. Cross-question. But the place of the 57 mm., 37 mm., 11 mm., and 7 mm. guns would have had to be taken by something else not included in your estimate?

Answer. Not included in my estimate. As I said, that estimate is liberal.

19. Cross-question. Have you ever been connected with the Bureau of Ordnance or acted as an ordnance officer?

Answer. No. However, I may mention that, besides the study of ordnance at the Naval Academy, the course in the French National School, which I took, includes the study of ordnance more advanced than that which our officers got.

20. Cross-question. According to your knowledge of the course pursued in the United States Navy in ordnance matters, is it your understanding that those 28 cm. and 14 cm. guns would have been refitted and used or that new ordnance would have been put in as soon as this could conveniently be done?

Answer. I think that, from my more or less limited knowledge of the methods of our Navy, the 14 cm. guns would have been all replaced and that the other guns would have been left the same.

21. Cross-question. You said that the system finally adopted for floating the vessel was to pump out each section in turn and afterwards allow it to fill until all the immediately necessary repairs had been made. In so doing, the machinery was for a time exposed to the air and again covered with water, was it not?

Answer. Whenever it was pumped out and then filled again the portions that were out of water when it was pumped out and were under water when it was refilled were of course so. My method did not involve, if I remember correctly, but possibly three—I think only two—pumpings out of the engine room. There had been, as I said, numerous other pumpings out of the engine room prior to the adoption of my method.

22. Cross-question. Do you consider that the pumpings out and filling which took place under your orders had any effect in deteriorating the machinery?

Answer. Scarcely any appreciable effect. They were left empty only for the time necessary to stop the leaks into that apartment, and, moreover, the injury from this process is not serious to large pieces of machinery. I do not think, I may add, that this process of deterioration that you refer to involved by any pumpings out of the wrecking company amounted to anything at all. It was a mere bagatelle. Undoubtedly there is some action when oxygen gets at this metal that has been submerged, but with the time limits that I speak of they were pumped out only a short time, when down they would go and fill up again. It was practically negligible.

23. Cross-question. After all this repair, to the extent of $900,000 or a million dollars had been put on the vessel, she would still have been a vessel of somewhat old type according to the standard of 1898 or 1899, would she not?

Answer. No, I think not; because in all her elements, except her armor distribution she was practically modern, and I think experts have all agreed on the efficiency of this type of ship, and, even with the armor distribution that they have, which at first view seems such a handicap, the situation is much ameliorated by carefully designed subdivision above the protective deck. The punishment in both would be principally in loss of life. Comparing results with those for vessels with the latest method of distributing armor, loss of life at the secondary batteries, and not in danger to the existence of the ship, the motive power is as much protected. The speed is greater, as a matter of fact. But there would be heavy loss of life in the secondary batteries—the machine guns, and even the 14 cm. guns—because of the armor not being distributed in those regions. But the stability of the ship would be safeguarded by this close subdivision above the protective deck, the extended use of coal in those regions, the coal bunkers, and the careful design of the ship. Thus she could be called in no sense obsolete. The bulk of the fighting force of the navies of the world that would enter their first line of defense per ton to-day—the bulk of the tonnage would scarcely be superior to that of this vessel.

24. Cross-question. But it is a fact, is it not, that in constructing an armored cruiser the size of the *Teresa* in 1898 for the United States Navy she would have been improved upon?

Answer. Oh, yes. It is a question among experts, though, and among naval designers as to the distribution of weights to the various features, and I scarcely believe that any improvement could be made with a vessel of 7,000 tons in the distribution of her weights. The *Colon* would correspond at the present date to about the maximum results on that tonnage. In fact that class of ship, including the *Colon*, which is an improvement, represents probably the best solution of deriving large power—by that I mean both offensive and defensive—capable of giving and accepting a large amount of punishment on a small tonnage. I must say that the *Colon* has a better distribution of armor, but the weight assignments and the general results are excellent in that type of ship.

25. Cross-question. Then I understand that you make no allowance in your valuation of the *Teresa* for the fact that she was not precisely such a vessel as the United States would have constructed at that time, except as to armor?

Answer. On the contrary, I make specific allowance for this and so stated in my estimates. I made such allowance in every feature of my estimates. Deterioration in each case was estimated as a certain percentage and was estimated as including the wear and tear of service and the tendency to obsoleteness and it was specifically stated in those estimates.

26. Cross-question. This board of which you were a member, which reported upon these various Spanish vessels, considered that the *Colon* also was a salvable ship, did it not?

Answer. It so reported.

27. Cross-question. That was your opinion, was it not?

Answer. Yes; it so reported, and it was my opinion.

28. Cross-question. It is still your opinion, is it not, that with proper measures the *Colon* might have been floated?

Answer. Yes.

29. Cross-question. About how much do you consider it would have cost to float the *Colon* by proper measures?

Mr. HAYDEN. I object to that as immaterial and irrelevant.

Answer. I estimate that if the first method were successful it would take less than $150,000; if she had to be tried again it would have taken probably $250,000, and that she could absolutely have been gotten off, bottom up, for less than $400,000 and then turned right side up for $50,000 additional; that it would have been a practical certainty for less than half a million dollars.

30. Cross-question. The *Colon* would have required very much less repair than the *Teresa*, would she not?

Answer. Very much less.

31. Cross-question. So that, if the *Colon* had been raised in accordance with your opinion, and put in order, her net value, deducting all expenses, would have been much greater than the net value of the *Teresa*, would it not?

Answer. I should say almost double.

32. Cross-question. To what vessel did you belong at the time of the battle?

Answer. I was assigned to the flagship, the *New York*.

33. Cross-question. Then you have an interest in the result of this suit, have you not?

Answer. I do not know. I have been told that I have not.

34. Cross-question. Counsel for the libellant have not told you so, have they?

Answer. No.

Redirect examination by Mr. HAYDEN:

1. Redirect question. You have, in your testimony, compared the *Teresa* in certain respects with the *Maine* and the *Texas*, also with the *New York* and *Brooklyn*. How did the *Teresa's* armor compare in efficiency with that of the *New York* and *Brooklyn?*

Answer. It puts the *Teresa* really out of the class of the *New York* and *Brooklyn*. Alongside of those she would be practically as a battleship compared to an armored cruiser.

2. Redirect question. That is to say, she was far superior to them?

Answer. Yes.

3. Redirect question. How would she compare with the former *Maine* and the *Texas* in the efficiency of her armor?

Answer. I should say that she was about on a par with the *Maine*.

3. Redirect question. How, if at all, has your opinion with regard to the salvability or buoyancy of the *Teresa* been affected by her abandonment on or about November 1, 1898, and her subsequent loss?

Answer. I consider the behavior of the *Teresa* after her abandonment—her remaining afloat practically at her normal water line and weathering a gale reported to be a very severe one, without anyone at the helm, no navigation, no motive power, without anyone on board—as simply a verification of my previous verbal reports to the senior officer, that she would be in thoroughly seaworthy condition.

By the COMMISSIONER:

Question. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth he same fully and at large in your answer.

Answer. I do not.

R. P. HOBSON.

Contract: Merritt and Chapman Derrick and Wrecking Company with the United States, February 29, 1898.

CRISTOBAL COLON.

Agreement supplementary to contract for raising Spanish war vessels now ashore on the southern coast of Cuba near Santiago.

It is hereby covenanted and agreed by and between the Merritt and Chapman Derrick and Wrecking Company and the United States, parties of the first part and the second part, respectively, to the contract of the 6th of July, 1898, for raising the Spanish vessels stranded near Santiago, as supplementary to said contract, as follows:

The party of the first part will at once proceed to Santiago de Cuba with the wrecking steamer *Senior*, with crew and provisions; three steam pumps, with boilers, equipment, fittings, and connections; two steam pumps, two cables and anchors, two sets of blocks and falls, two six-inch falls, two surf boats, two cargo boats, one sea barge, two pontoons, fully equipped with jacks, chains, pumps, etc.; one air compressor, one steam diving apparatus, and several sets of purchase blocks, accompanied by one wreck-master in charge, two assistant wreck-masters, two foremen, five engineers, three firemen, seven divers, tenders, and apparatus, seven wreckers, cook, and boy, and upon arrival at the scene of the wreck of the *Cristobal Colon* at once begin the work of raising that vessel and articles on board her, as stipulated in the above-mentioned contract of the 6th of July instant; such of said vessel's armament, stores, guns, material, equipment, fittings, appurtenances, and other articles as may be recovered, together with the vessel herself, if the party of the first part shall be successful in raising her, to be taken by the party of the first part, without unnecessary delay, to the navy-yard, New York, and there delivered to the commandant of that navy-yard, subject to such change in place of delivery of vessel or recovered property as may be decided upon by the party of the second part.

Should it be necessary for the party of the first part to employ additional men or material not enumerated in this agreement, the compensation to be paid therefor by the party of the second part shall be determined by agreement between the parties hereto or by arbitration if necessary, the party of the second part to provide all necessary pontoon capacity in excess of 800 tons, which latter-mentioned capacity is to be furnished by the party of the first part.

The price to be paid per diem for the vessel, appliances, plant, and employes of the party of the first part, as hereinbefore enumerated, while at work at the scene of the wreck shall be eight hundred and twenty-nine dollars and twenty-five cents ($829.25), subject to deductions during passage, according to the aforesaid contract, which sum shall cover all charges, including subsistence of employes, except as herein otherwise expressly agreed. In case the party of the first part should succeed in raising the *Cristobal Colon* and delivering the same to the party of the second part in accordance with the terms and conditions of this agreement and the aforesaid contract, the further compensation to be allowed therefor to the party of the first part, subject to determination in the manner provided in said contract, shall not exceed the sum of five hundred thousand dollars ($500,000), inclusive of the per diem and other compensation specified or provided for in this agreement.

This agreement may be terminated at any time by the party of the second part at its discretion. The aforesaid contract between the parties hereto shall be and remain in full force and effect, except as herein expressly modified, and all the covenants, conditions, and provisions thereof shall be deemed and taken as a part hereof so far as applicable hereto.

In witness whereof, the respective parties hereto have hereunto set their hands and seals this twenty-ninth day of July, A. D., eighteen hundred and ninety-eight.

[Seal of the Merritt and Chapman Company.]

The Merritt and Chapman Derrick and Wrecking Company,
By Israel J. Merritt, *President.*

Attest by:
Wm. L. Chapman, *Secretary.*

[Seal of the Navy Department.]

The United States,
By John D. Long,
Secretary of the Navy.

Sam. C. Lemly,
Judge-Advocate-General, as to John D. Long, Secretary of the Navy.

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193 APPLICATIONS FOR BOUNTY MONEY.

Prize list of U. S. F. S. New York.

List of officers and men attached to and serving on board the U. S. F. S. "New York," showing their exact rank or rating held at the time of the sortie and destruction of the Spanish fleet the "Infanta Maria Teresa," "Vizcaya," "Almirante Oquendo," "Cristobal Colon," and torpedo boats "Furor" and "Pluton," under Admiral Cervera, near Santiago de Cuba, July 3, 1898.

* * * * * * *

F. E. CHADWICK,
Captain, United States Navy, Commanding.
ARTHUR BURTIS,
Paymaster, U. S. N.

JULY 5, 1898.

List of officers, crew, and marines on board the U. S. F. S. "Brooklyn," who assisted in the destruction of the following Spanish vessels: "Infanta Maria Teresa," "Vizcaya," "Almirante Oquendo," "Cristobal Colon," "Pluton," and "Furor," July 3, 1898, Santiago de Cuba.

* * * * * * *

Respectfully submitted.

J. GOODWIN HOBBS,
Paymaster, U. S. N.

U. S. F. S. BROOKLYN,
Guantanamo, Cuba, July 26, 1898.

Examined and certified to be correct.

F. A. COOK,
Captain, U. S. N., Commanding.

Prize list of the officers, crew, and marines of the U. S. battle ship "Oregon," first rate, engaged in the action of July 3, 1898, with the Spanish fleet under Admiral Cervera.

* * * * * * *

Guantanamo Bay, Cuba, July 9, 1898.

S. REED CALHOUN,
Paymaster, U. S. N.

Approved.

C. E. CLARK,
Captain, U. S. N., Commanding.

194 *List of officers, crew, and marines on board the United States battle ship "Indiana" at the time of the action of July 3, 1898, off Santiago de Cuba, resulting in the destruction of the Spanish squadron, composed of the "Infanta Maria Teresa," "Oquendo," "Cristobal Colon," "Viscaya," "Pluton," and "Furor."*

U. S. S. "INDIANA" (FIRST RATE),
Guantanamo Bay, Cuba, July 25, 1898.

I certify that the following is a correct list of the officers, crew, and marines, with their rank or rate, and rate of pay, attached to the U. S. S. "Indiana," on July 3, 1898.

* * * * * * *

H. C. TAYLOR,
Captain, U. S. N., Commanding U. S. S. Indiana.

U. S. S. "INDIANA" (FIRST RATE),
Navy-Yard, New York, January 26, 1899.

SIR: Observing in the public prints that the question of the payment of bounties to officers and sailors who engaged in the destruction of the Spanish war vessels during the war has been referred by the Navy Department to the Court of Claims, I respectfully submit to the Navy Department, for transmission to the Court of Claims, the claim of myself, as commanding officer of the "Indiana," its officers and crew, to share in the prize or bounty money awarded for the destruction of the Spanish vessels. I inclose the detailed claim referred to on a separate paper.

Very respectfully,

H. C. TAYLOR,
Captain, U. S. N., Commanding U. S. S. Indiana.

The SECRETARY OF THE NAVY,
Washington, D. C.

U. S. S. "INDIANA" (FIRST RATE),
Navy-Yard, New York, January 26, 1899.

SIR: I have the honor to make claim for myself, as the commanding officer of the United States battle ship "Indiana," for her officers and crew, to share in the prize or bounty money awarded or to be awarded for the destruction of the Spanish ships during the war between the United States and Spain.

The names of the vessels under which we claim such share of bounty or prize money are:

"Infanta Maria Teresa," at Santiago de Cuba, July 3rd, 1898; "Vizcaya," at Santiago de Cuba, July 3rd, 1898; "Oquendo," at Santiago de Cuba, July 3rd, 1898; "Cristobal Colon," at Santiago de Cuba, July 3rd, 1898; "Furor," at Santiago de Cuba, July 3rd, 1898; "Pluton," at Santiago de Cuba, July 3rd, 1898; "Reina Mercedes," at Santiago de Cuba, July 4th, 1898.

195 The "Indiana" was a part of the fleet under Rear-Admiral Sampson, and was of those vessels which were upon the 3rd and 4th days of July, 1898, engaged with the Spanish war ships above mentioned at Santiago de Cuba.

Very respectfully,

H. C. TAYLOR,
Captain, U. S. N., Commanding U. S. S. "Indiana."

Hon. ARCHIBALD HOPKINS,
Clerk of the Court of Claims, Washington, D. C.

U. S. S. "IOWA" (FIRST RATE),
Guantanamo Bay, Cuba, August 13th, 1898.

SIR: I forward herewith a list[1] of officers and men of this vessel who took part in the engagement with the Spanish squadron off Santiago de Cuba on July 3rd, 1898, and who were present at the time of the destruction of the Spanish vessels "Infanta Maria Teresa," "Almirante Oquendo," and "Viscaya;" also the torpedo-boat destroyers "Furor" and "Pluton." The list also indicates the pay-roll number, rank of, ratings of, and pay received by each person on board at the time.

The "New York," "Indiana," "Texas," "Oregon," "Brooklyn," "Gloucester," and "Ericsson" were within signal distance of the U. S. S. "Iowa."

This vessel was also present at the sinking of the "Reina Mercedes" at the entrance of the channel to the harbor of Santiago de Cuba during the night of July 4th–5th, 1898.

There is attached to this list the names of contestants, if any, and absentees under the dates noted (July 3rd, 4th, 5th, 1898).

The list is made in conformity with special circular No. 43, issued by the Navy Department on July 13th, 1898, and is to take the place of the list sent to the Auditor on July 26th, 1898.

A duplicate list is sent to the Bureau of Navigatior.

Very respectfully,

R. D. EVANS,
Captain, U. S. Navy, Commanding.

To the AUDITOR FOR THE NAVY DEPARTMENT,
Treasury Department, Washington, D. C.

Prize list of the U. S. battle ship "Texas," July 3d and 4th, 1898, on which dates the following Spanish ships were destroyed: "Almirante Oquendo," "Infanta Maria Teresa," "Viscaya," "Cristobal Colon," "Pluton," "Furor," and "Reina Mercedes."

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J. S. CARPENTER,
Paymaster, U. S. N.

Approved.

J. W. PHILIP,
Captain, U. S. N., Commanding U. S. Battle Ship "Texas."

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[1]Omitted in printing.

196 U. S. S. "GLOUCESTER,"
Ponce, Porto Rico, August 17th, 1898.

SIR: In accordance with paragraph 1 of special circular No. 43, Navy Department, 1898, I have the honor to herewith submit the prize list[1] of this ship for the battle of July 3rd, 1898, off Santiago de Cuba, and a separate prize list for the capture of the port of Ponce, Porto Rico.

There were no absentees from this ship at the time the above-mentioned events took place.

There are no contestants who dispute their rank, rating, or pay, as it is given in the prize lists.

Very respectfully,

RICHARD WAINWRIGHT,
Lieut. Commander, U. S. N., Commanding.

The SECRETARY OF THE NAVY,
Navy Department, Washington, D. C.

U. S. S. "HIST,"
South of Cuba, July 25th, 1898.

SIR: On behalf of the officers and crew of this vessel I hereby make claim for a proportionate share of any bounty that may be awarded for the destruction of the Spanish fleet off Santiago, Cuba, July 3d, 1898.

This vessel not only took part in the chase, but when the enemy's vessels were beached took from the "Viscaya" 143 prisoners and picked up 23 more from the water and shore.

The vessels destroyed were the "Maria Teresa," "Viscaya," "Cristobal Colon," "Oquendo" (armored cruisers), and "Pluton" and "Furor" (torpedo-boat destroyers).

The vessels engaged were the U. S. F. S. "New York," U. S. F. S. "Brooklyn," and the U. S. vessels "Texas," "Iowa," "Indiana," "Oregon," "Gloucester," "Hist," "Vixen," and "Ericsson."

I herewith enclose a certified duplicate list[1] of the officers and crew of this vessel at the time and request the prize commissioners, or such court as may receive the case for adjudication, be informed.

I am, respectfully,

LUCIEN YOUNG,
Lieut. U. S. N., Comdg.

Hon. SECRETARY OF THE NAVY,
Washington, D. C.

U. S. S. "VIXEN" (FOURTH RATE),
Guantanamo, Cuba, August 2nd, 1898.

In obedience to special circular No. 43, of July 13, 1898, I submit herewith the name of William H. Powell, apprentice, 3rd class, who was a member of the crew of the U. S. S. "Vixen" upon the date of her leaving League Island, Pa., May 7, 1898.

197 Powell was transferred to hospital at Key West, Fla., on May 13, 1898, for treatment for his disease, adenitis. He never again joined the "Vixen," and at the end of the quarter ending June 30, 1898,

[1]Omitted in printing.

his accounts were closed, and on July 5, 1898, they were forwarded to the U. S. R. S. "Richmond" at League Island Navy-Yard.

Very respectfully,

ALEX. SHARP, Jr.,
Lieut. Comdg.

List of officers and crew of the U. S. torpedo boat "Ericsson" present and serving on board and participating in the action which resulted in the complete destruction of the Spanish fleet off Santiago de Cuba July 3, 1898.

* * * * * * *

I certify the above list to be complete and correct, and that there are no contestants.

U. S. torpedo boat "Ericsson," July 19, 1898.

N. R. USHER,
U. S. Navy, Commanding.

NAVY DEPARTMENT,
Washington, September 22, 1899.

SIR: Referring to this Department's letter of the 20th of January last, transmitting certain claims for bounty under the provisions of section 4635 of the Revised Statutes, for sinking or otherwise destroying vessels belonging to Spain on various dates during the period from April 21 to August 12, 1898, I inclose herewith, for the consideration of the court, the claim of the officers and men serving on board the U. S. S. "Resolute," July 3, 1898, the date of the battle of Santiago de Cuba.

Very respectfully,

CHAS. H. ALLEN,
Acting Secretary.

The CHIEF CLERK, COURT OF CLAIMS.

U. S. S. "RESOLUTE,"
Havana, Cuba, February 20, 1899.

SIR: I have the honor to ask to request that the Department will have enquiry made for the letter sent by me on July 29, 1898, with accompanying list of officers and men entitled to share in the head money for the destruction of Cervera's fleet off Santiago de Cuba on July 3, 1898. The original claim was made on July 4, 1898, and returned with an endorsement from Capt. F. E. Chadwick, chief of staff, dated Playa del Este, Cuba, July 8, 1898, and received by me July 29, 1898.

The above letter with list, in accordance with the Department's order of June 25, 1898, was addressed to the honorable Secretary of the Navy, and delivered on board the flagship "New York" at Guantanamo Bay.

I understand that the Judge-Advocate's Office states that no claim has been there received from the "Resolute" for participation in the
198 action of July 3, 1898. As the "Resolute" was not only within signal distance, but also an armed vessel under the fire of the Spanish forts and fleet, I claim that her officers and men are entitled to share.

I enclose duplicate list signed by myself and request that they may be forwarded to William H. Fulper, of New Jersey, late assistant paymaster, U. S. Navy, then paymaster of this ship, for his certification.

Very respectfully,

J. G. EATON,
Commander, U. S. N., Commanding.

The honorable the SECRETARY OF THE NAVY.
Navy Department, Washington, D. C.

199 U. S. S. "SUWANEE,"
Guantanamo, Cuba, August 3, 1898.

SIR: Herewith is a prize list[1] of the officers and crew of this vessel, for a share in prize money for the Spanish ships "Maria Teresa," "Vizcaya," "Cristobal Colon," "Almirante Oquendo," "Pluton," and "Furor," sunk or destroyed on July 3, and for the Spanish cruiser "Reina Mercedes" sunk on July 5, 1898.

* * * * * * *

Very respectfully,

D. DELEHANTY,
Lieut. Commdr., U. S. N., Commanding.

The honorable the SECRETARY OF THE NAVY,
Washington, D. C.

U. S. STEAMER "MANNING,"
Guantanamo Bay, Cuba, July 16, 1898.

SIR: I respectfully enter this as a claim in behalf of myself, officers, and men for our proportion of any prize money accruing from the capture of the Spanish fleet off Santiago de Cuba on July 3d, 1898.

I base my claim on the fact that this ship was within signal distance of the flagship "New York" at the commencement of the engagement, the "New York" being off Altares and this ship off Daiquiri, five miles east.

I inclose herewith a list of the officers and men attached to this ship on July 3d, 1898.

Very respectfully,

FRED. M. MUNGER,
Capt., R. C. S.

Hon. SECRETARY OF THE NAVY,
Washington, D. C.

200 U. S. S. "VIXEN" (4TH RATE),
Guantanamo Bay, Cuba, July 7, 1898.

SIR: In obedience to article 15, Articles for the Government of the Navy, I have the honor to submit a complete list of the officers and men of the U. S. S. "Vixen" entitled to share in the award of the prize money due from the destruction of the Spanish fleet under the command

[1] Omitted in printing.

of Admiral Cervera, on July 3, 1898, with their rank or rating and rate of pay.

(Here follows list, omitted from this copy.)

Very respectfully,

ALEX. SHARP, Jr.,
Lieutenant, Commanding.

To SECRETARY OF THE NAVY,
Washington, D. C.

(Commander in chief.)

There were no absentees or contestants. W. H. Powell (app. 2d cl.). Accounts closed June 30, 1898.

ALEX. SHARP, Jr.,
Lt., Comdg.

201 U. S. FLAGSHIP "NEW YORK" (1ST RATE),
At Sea, August 19th, 1898.

SIR: I have the honor to forward herewith a list of officers and men attached to and serving on board the U. S. flagship "New York," entitled to share in the prize money accruing from the destruction of the Spanish vessels, July 3rd, the "Infanta Maria Teresa," "Almirante Oquendo," "Vizcaya," "Cristobal Colon," and the torpedo-boat destroyers "Pluton" and "Furor."

2. The following named vessels are entitled, in my opinion, to share in all excepting that accruing from the "Cristobal Colon:" namely, "New York," "Brooklyn," "Texas," "Iowa," "Indiana," "Oregon," "Gloucester," "Vixen," and "Ericsson."

"The following ships are in my opinion entitled to share in the prize money accruing from the destruction of the "Cristobal Colon:" "New York," "Brooklyn," "Texas," "Oregon," and "Vixen."

Very respectfully,

F. E. CHADWICK,
Captain, U. S. Navy, Commanding.

The SECRETARY OF THE NAVY,
Navy Department, Washington, D. C.

(Bureau of Navigation.)

202 DESCRIPTION OF THE "INFANTA MARIA TERESA."

No. 375.

[Memorandum B, accompanying 3rd endorsement O. N. I. 375, Sept. 15, 1899.]

Replying to Bureau of Navigation's endorsement No. 186981 of September 2, 1899, on the call of the Court of Claims in the case of engagement at Santiago de Cuba, July 3, 1898, the following is furnished for the 2nd paragraph, which requests "a description of the armor, armament, complement, and other known particulars showing the offensive and defensive force of the Spanish vessels "Almirante Oquendo," "Infanta Maria Teresa," "Viscaya," "Cristobal Colon," "Pluton," and "Furor" on July 3, 1898, prior to their capture or destruction."

The following data is taken from Estado General de la Armada, 1898, which is the official navy register of Spain:

"Infanta Maria Teresa," "Almirante Oquendo," and "Viscaya."

Length, 103.63 m. (358.6 ft.). Breadth, 19.81 m. (64.96 ft.).
Depth of hold, 11.58 m. (38 ft.). Extreme draught, 6.55 m. (21.5 ft.).
Displacement, 7,000 tons. HP., 13,700; 2 screws.
Maximum speed, 20.25 knots. Coal capacity, 1,050 tons.
Radius of action at economical speed, 9,700 miles.
Armor protection:
Armor belt on the water line, 305 mm. (12.01 in.).
Turrets, 250 mm. (9.84 in.).
Protective deck, 50 mm. (1.97 in.).
Armament:
II Hontoria rifles, 28 cm. (11.02 in.).
X Hontoria rapid-fire, 14 cm. (5.51 in.).
VIII Nordenfeldt rapid-fire, 57 mm. (2.24 in.).
VIII Hotchkiss revolving cannon, 37 mm. (1.46 in.).
II Nordenfeldt mitrailleuse, 11 mm. (0.43 in.).
II rapid-fire, 7 mm. (0.27 in.).
Torpedo tubes, VIII.
Complement, 497 for each ship; total for three, 1,491.

"Cristobal Colon."

Length, 100 m. (328.1 ft.). Breadth, 18.2 m. (59.71 ft.).
Depth of hold, 12.19 m. (40 ft.). Extreme draught, 7.75 m. (25.42 ft.).
Displacement, 6,840 tons. HP., 13,000; 2 screws.
Maximum speed, 20.25 knots. Coal capacity, 1,050 tons.
Radius of action at economical speed, 8,300 miles.
Armor protection:
Side armor extending to upper deck, 150 mm. (5.91 in.).
Armor belt on the water line, 150 mm. (5.91 in.).
Redoubts, 150 mm. (5.91 in.).
Turrets, 150 mm. (5.91 in.).
Protective deck, 40.37 mm. (1.61 in.).
Armament:
II Armstrong, 254 mm. (10 in.).[1]
X Armstrong, 132 mm. (5.2 in.).
VI Armstrong, 120 mm. (4.72 in.).
X Nordenfeldt, 57 mm. (2.24 in.).
X Nordenfeldt, 37 mm. (1.46 in.).
II Mitrailleuse.
Torpedo tubes, V.
Total complement, 543 men.

[1] These two Armstrong guns were not on board. This fact was not known, however, until after the capture of the ship at Santiago.

203

"Furor."

Length, 67.954 m. (222.93 ft.). Breadth, 6.705 m. (22 ft.).
Depth of hold, 3.962 m. (13.65 ft.). Maximum speed, 28 knots.
Displacement, 380 tons.

Armament:
II 75 mm. (2.95 in.) Maxim-Nordenfeldt.
II 57 mm. (2.24 in.) Maxim-Nordenfeldt.
II 37 mm. (1.46 in.) Maxim-Nordenfeldt.
Torpedo tubes: II.

Complement:
1 teniente de navio de 1ª = (lieutenant, 1st class).
1 teniente de navio = (lieutenant).
1 maquinista mayor = (chief machinist).
6 maquinistas = (machinists).
2 idem aprendices = (machinists' apprentices).
1 contramaestre = (boatswain).
1 condestable = (gunner).
1 practicante = (assistant surgeon).
2 maestranza = dockyard men (?).
Total complement, 65 men.

"Pluton."

Length, 67.056 m. (219.98 ft.). Displacement, 380 tons.
Breadth, 6.705 m. (22 ft.). Maximum speed, 30 knots.
Depth of hold, 3.962 m. (13.65 ft.).

Armament:
II 75 mm. (2.95 in.) Maxim-Nordenfeldt.
II 57 mm. (2.24 in.) Maxim-Nordenfeldt.
II 37 mm. (1.46 in.) Maxim-Nordenfeldt.
Torpedo tubes: II.

Complement: Total complement, 65 men.

SUMMARY.

Name of ship.	Tonnage.	Complement.
Infanta Maria Teresa	7,000	497
Almirante Oquendo	7,000	497
Vizcaya	7,000	497
Cristobal Colon	6,840	543
Furor	380	65
Pluton	380	65
Total	28,600	2,164

NOTE.—The printed descriptions of Spanish ships appended hereto have been compiled from various sources, and are, in the main, very accurate.

RICHARDSON CLOVER,
Chief Intelligence Officer.

SEPTEMBER 15, 1899.

204 [With Memorandum B, O. N. I., 375, Sept. 15, 1899.]

"Infanta Maria Teresa."

Armored cruiser, or second-class battle ship. The arrangement of the battery and, in fact, the general design of the ship resemble closely that of the British 5,600-ton belted cruisers of the "Orlando" class. Built at the Nervion yard, Bilbao, where she was launched in 1890 and completed in 1894. The hull is of steel without sheathing. Recurving ram bow. Central superstructure extending between barbette towers. The smoke pipes are two in number, of fair height, reaching about two-thirds the way from the water line to the military tops. There are two military masts, each carrying a single open top and a light yard. Both masts and smoke pipes have a slight rake. Boats are carried, partly by davits, well above the fire of the 5.5-inch guns, and partly inboard on skid beams. A derrick on the mainmast is used to get the inner boats out, but as this is usually stowed horizontal it is not noticeable at a casual glance. Long bridge forward of foremast, with pilot house abaft it and between it and the mast. Searchlight on each end of bridge and one on platform abaft mainmast. Conning tower under bridge. Complement, 484.

Armament.—Two 11-inch Hontoria guns, mounted singly in barbette towers forward and aft on the midship line.

Ten 5.5-inch Hontoria R. F. G. on main deck in the superstructure. Four in sponsons, two just abaft forward barbette tower, and two just forward after tower; the remaining six in recessed ports between the sponsoned guns.

Two 10-pounders.

Eight 6-pounder Nordenfeldt R. F. G.

Two 0.43-inch Nordenfeldt machine guns.

Eight Hotchkiss revolving cannon.

Eight torpedo tubes, one each side of stem, one each side of sternpost, two nearly abreast conning tower, and two beneath after end of superstructure.

Protection.—Partial belt, 315 feet long, 5.5 feet broad, 12 inches thick amidships, and 10 inches at the ends. Coal bunkers 4 to 5 feet thick abreast boilers and engines. Barbette towers, 10 inches thick; conning tower, 12 inches; shields over barbettes, 4 inches; middle protective deck over citadel, 2 inches thick; forward and after protective decks, 3 inches on the slopes at sides and 2 inches on the flat; glacis plates protecting tops of cylinders, 5 inches; loading tubes beneath barbettes, 8 inches. All armor Cammell compound.

Motive power.—Vertical triple-expansion engines, driving twin screws. Four double-ended cylindrical boilers, 15.25 feet in diameter and 16.4 feet long; two single-ended boilers of same diameter and 10.5 feet long; also two small auxiliary boilers; working pressure of boilers, 150 pounds. Boilers in two water-tight compartments. Total capacity of bunkers, 45,000 square feet, which ought to be sufficient to stow 1,000 tons of coal. On the 8-hour natural-draft trial the I. H. P. developed was 9,558 and the speed 18.5 knots. On the 4-hour forced-draft trial the I. H. P. was 13,758 and the speed 20.15 knots. The speed was obtained by standardizing the screw.

Dimensions.—Length between perpendiculars, 340 feet; extreme beam, 65.16 feet; mean draught, 21.5 feet; displacement at this draught, 6,890 tons.

205 DECREE OF CONDEMNATION.

[Filed July 30, 1901.]

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. NAVY, commander in chief, in his own behalf and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic Station who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures,

vs.

THE SPANISH VESSEL OF WAR "INFANTA MARIA Teresa," and miscellaneous stores and supplies captured upon her and other Spanish war vessels.

District court. No. 562.

This cause came on to be heard upon the libel, the answer of the United States, the answer of the Secretary of the Navy, and proofs adduced by the libellant and the United States, and was submitted by counsel for all parties on briefs and oral argument, and it appearing to the satisfaction of the court that on July 3, 1898, a state of war then existing between the United States and Spain, a naval engagement took place off Santiago de Cuba between a fleet of the United States naval force on the North Atlantic Station, under the command of the libellant, and a fleet of Spanish vessels of war, wherein the Spanish armored cruiser "Infanta Maria Teresa," together with her guns, munitions of war, equipment, stores, money, and other articles, and certain guns, munitions of war, equipment, stores, money, and other articles then on board of the Spanish vessels of war "Viscaya," "Almirante Oquendo,"
206 "Cristobal Colon," "Pluton," and "Furor" were captured by the said United States fleet; and thereafter the said "Infanta Maria Teresa" and the said guns, munitions of war, equipment, supplies, money, and other articles were appropriated by the United States for the use of the Navy Department, and none of them have been or can be sent in for adjudication;

It is this 31st day of July, 1901, adjudged, ordered, and decreed: That the said "Infanta Maria Teresa" and the said guns, munitions of war, equipment, stores, money, and other articles are condemned and forfeited to the United States as lawful prize of war;

That upon the ascertainment of the value of the said "Infanta Maria Teresa" and the said guns, munitions of war, equipment, stores, money, and other articles the Secretary of the Navy shall deposit an amount equal thereto with the Treasurer of the United States subject to further orders of this court in this cause;

That the libellant and the officers and enlisted men of the United States Navy who took part in the said naval engagement off Santiago de Cuba, and in behalf of whom he brings this suit, are entitled to receive a moiety of the said amount; and

It is further ordered and adjudged: That this cause be referred to the auditor of this court to determine and state the value of the said "Infanta

Maria Teresa" and the said guns, munitions of war, equipment, stores, money, and other articles captured and appropriated by the United States as aforesaid, and hereby condemned as prize.

A. C. BRADLEY, *Justice.*

(Indorsed:) Approved as to form. G. H. Gorman, Special Attorney, U. S.

207 APPLICATION FOR APPEAL TO SUPREME COURT.

[Filed Aug. 2, 1901.]

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. NAVY, commander in chief, in his own behalf and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic Station who took part in the naval engagement off Santiago de Cuba on July 3rd, 1898, and subsequent captures,

v.

THE SPANISH VESSEL OF WAR "INFANTA MARIA Teresa" and miscellaneous stores and supplies captured upon her and other Spanish war vessels.

} District court. No. 562.

Come now the United States of America, by their Attorney-General, and from the decree of this honorable court entered on the 31st day of July, 1901, give notice of and make application for an appeal to the Supreme Court of the United States.

G. H. GORMAN,
Special Attorney for the United States.

Due service of the above application is hereby acknowledged this 1st day of August, 1901.

McCAMMON & HAYDEN,
Proctors for Libellant.
GEORGE A. & WM. B. KING.

Allowed nunc pro tunc, April 17, 1902.

A. C. BRADLEY, *Justice.*

208 WAIVER OF CITATION.

[Filed Oct. 30, 1901.]

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. NAVY, commander in chief, in his own behalf and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic Station who took part in the naval engagement off Santiago de Cuba, on July 3rd, 1898, and subsequent captures,
v.
THE SPANISH VESSEL OF WAR "INFANTA MARIA Teresa" and miscellaneous stores and supplies captured upon her and other Spanish war vessels.
} District court. No. 562.

Waiver of citation.

Service of citation to William T. Sampson, rear-admiral, U. S. N., &c., the libellant herein, upon the appeal of the United States to the court of appeals of the District of Columbia, noted the 2nd day of August, 1901, is hereby waived.

McCAMMON & HAYDEN,
Proctors for Libellant.

209 INSTRUCTIONS TO CLERK FOR PREPARATION OF RECORD.

[Filed Oct. 30, 1901.]

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, &c.,
vs.
THE SPANISH VESSEL OF WAR "INFANTA MARIA Teresa," &c.
} District court. No. 562.

Designation for transcript of record.

Mr. JOHN R. YOUNG,
Clerk of the supreme court of the District of Columbia.

SIR: In making up the transcript of record in the above-entitled cause, you will please include only the following parts of the record:

1. Libel.
2. Order for process, &c.
3. Monition to the Secretary of Navy and District attorney.
4. General notice.
5. Proof of publication.
6. Motion for rule on Secretary of the Navy.
7. Rule on Secretary of the Navy.
8. Answer of the United States.
9. Replication.

10. Answer of the Secretary of the Navy.
11. Replication to answer of the Secretary of the Navy.
12. Printed evidence, Parts I and II.
13. Report of Secretary of Navy for 1898, Vols. I and II.
14. Applications for bounty money and the description of the "Teresa."
15. Decree.
16. Appeal.
17. Waiver of citation.

Very respectfully,

CHARLES C. BINNEY,
Special Attorney for the United States.

Service of a copy of the above on the proctors for the libellant is hereby waived and the above list approved.

McCAMMON & HAYDEN,
Proctors for Libellant.

210 WAIVER AS TO TIME OF FILING TRANSCRIPT.

[Filed Oct. 31, 1901.]

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. NAVY, commander in chief, in his own behalf, and also in behalf of the officers and enlisted men of the United States naval force on the North Atlantic Station who took part in the naval engagement off Santiago de Cuba on July 3, 1898, and subsequent captures,
v.
THE SPANISH VESSEL OF WAR "INFANTA MARIA TERESA" and miscellaneous stores and supplies captured upon her and other Spanish war vessels.

District court. No. 562.

Waiver as to time of filing transcript.

The filing of a transcript of the record of this cause on the part of the United States within forty days from the entry and perfection of the appeal of the United States is hereby waived, provided that the said transcript shall be filed on the part of the United States within thirty days from this date.

October 30, 1901.

McCAMMON & HAYDEN,
Proctors for Libellant.

211 DIRECTIONS TO CLERK FOR PREPARATION OF TRANSCRIPT ON APPEAL TO SUPREME COURT OF THE UNITED STATES.

[Filed Apr. 9, 1902.]

In the supreme court of the District of Columbia.

WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. N., etc.,
vs.
THE SPANISH VESSEL OF WAR "INFANTA Maria Teresa," etc.
} No. 562, Dist. Ct.

JOHN R. YOUNG, Esq.,
Clerk, Supreme Court of the District of Columbia.

SIR: In pursuance of the stipulation filed March 12, 1902, in the above-entitled cause, you are requested to prepare for use in the appeal of the United States to the Supreme Court of the United States entered the 31st day of July, 1901, a complete record in this cause containing the same matter which was contained in the record which was taken to the court of appeals of the District of Columbia. This record should be entitled, Completed Record, in order to distinguish it from the record which was prepared by you on the 13th day of March, 1902, and which has been already filed in the Supreme Court of the United States.

CHARLES C. BINNEY,
Special Attorney.

McCAMMON & HAYDEN,
Proctors for Libellant.

GEORGE A. & WM. B. KING,
Proctors for a Number of Officers and Men.

212 Supreme court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 211, inclusive, and the report of the Secretary of the Navy, contained in two volumes, transmitted herewith, marked "Volume I" and "Volume II," to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this record, in cause No. 562, district court, William T. Sampson, rear-admiral, United States Navy, etc., vs. The Spanish vessel of war "Infanta Maria Teresa," etc., as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said district, this 16th day of April, A. D. 1902.

[SEAL.]

JOHN R. YOUNG,
Clerk.

213 Supreme Court of the United States.

October term, 1901.

THE UNITED STATES, APPELLANT,
v.
WILLIAM T. SAMPSON, REAR-ADMIRAL, United States Navy, etc.
No. 597.

It is hereby agreed that the foregoing supplemental transcript of the record in the above-entitled cause, pages numbers 1 to 212, inclusive, shall be added to the record now on file herein, in accordance with the stipulation heretofore filed.

J. K. RICHARDS,
Solicitor-General.
McCAMMON & HAYDEN,
Proctors for Libellant.
GEORGE A. & WM. B. KING,
Proctors for a Number of Officers and Men.

214 (Indorsement on cover:) File No. 18450. Supreme Court of the United States. October term, 1901. No. 597. The United States, appellant, vs. William T. Sampson, rear-admiral U. S. Navy, &c. Stipulation of counsel and addition to record. Filed April 18th, 1902.

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No. 597.

Office Supreme Court U.S.
FILED.
MAY 19 1902
JAMES H. MCKENNEY.

Sug. of death. Sec. Herron

Filed May 19, 1902.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT,
v.
WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. Navy, etc.
No. 597.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

SUGGESTION OF DEATH OF REAR-ADMIRAL SAMPSON AND MOTION THEREON.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT,
v.
WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. Navy, etc.
No. 597.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

SUGGESTION OF DEATH OF REAR-ADMIRAL SAMPSON AND MOTION THEREON.

The Attorney-General suggests the death of William T. Sampson, rear-admiral of the United States Navy, commander in chief, and, representing that said late Admiral Sampson was libellant below and heretofore on appeal in this court, in his own behalf and also in behalf of the officers and enlisted men serving under him, moves that this cause may proceed for the benefit of all the captors, the officers and enlisted men taking part in the engagement off Santiago, under the present caption and without substitution of any other individual as party.

The usual requirement of a substituted party does not appear to be necessarily applicable to this peculiar

proceeding in prize. Section 4625, Revised Statutes, provides as follows:

> If, when no property can be sent in for adjudication, the Secretary of the Navy shall not, within three months after any capture, designate a district for the institution of proceedings, *the captors* may institute proceedings for adjudication in any district.

This cause was instituted under that law, and under the practice established after the civil war, by which under the same law various suits in prize were brought by Admirals Farragut and Porter and other officers acting for the benefit of all captors.

The representation by the Commander in Chief being thus personal and formal only, I perceive no reason why the title of the case may not remain unchanged and the proceedings continue in this form for the benefit of all living officers and enlisted men who are the main parties in interest. The interest of the late Admiral Sampson, if the claim of prize shall be sustained, or of any other claimants who may have died, would necessarily be recognized by settlement with their personal representatives in the Treasury Department, where all questions of individual right on distribution are decided. But if the court is of opinion that there should be a substitution, I request and move for a suggestion from the court whether the action should be revived in the name of Admiral Sampson's personal representative, or an officer of the Navy should be duly designated and substituted who

will properly represent *pro hac vice* all of the officers and men of the fleet.

P. C. KNOX,
Attorney-General.

HENRY M. HOYT,
Assistant Attorney-General.

We concur in support of the foregoing motion, and agree on behalf of our respective clients that they will respond in costs as final decree herein may require.

JOS. K. MCCAMMON,
JAMES H. HAYDEN,
Of Counsel for Various Captors.

GEORGE A. KING,
WILLIAM B. KING,
WILLIAM E. HARVEY,
Of Counsel for Various Captors.

As representing the estate of the late Rear-Admiral Sampson, we hereby concur in the foregoing motion

JOS. K. MCCAMMON,
JAMES H. HAYDEN,
Counsel for the Personal Representatives of William T. Sampson, Deceased.

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309 310
Nos. 597, 654, 655 & 656
Motion to advance.

Office Supreme Court U.S.
FILED
APR 24 1902
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Apr. 24, 1902.

THE UNITED STATES, APPELLANT,
v.
WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. Navy, etc. } No. 597.

THE UNITED STATES, APPELLANT,
v.
GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC., and Edwin F. Stovell, captain, etc., intervenor. } No. 654.

GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC.,
v.
THE "DON JUAN DE AUSTRIA," "ISLA DE CUBA," "Isla de Luzon," etc., and Edwin F. Stovell, captain, etc., intervenor. } No. 655.

EDWIN F. STOVELL, CAPTAIN, ETC., INTERVENOR, appellant,
v.
GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC., and the "Don Juan de Austria," "Isla de Cuba," "Isla de Luzon," etc. } No. 656.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT, v. WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. Navy, etc.	No. 597.
THE UNITED STATES, APPELLANT, v. GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC., and Edwin F. Stovell, captain, etc., intervenor.	No. 654.
GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC., v. THE "DON JUAN DE AUSTRIA," "ISLA DE Cuba," "Isla de Luzon," etc., and Edwin F. Stovell, captain, etc., intervenor.	No. 655.
EDWIN F. STOVELL, CAPTAIN, ETC., INTERvenor, appellant, v. GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC., and the "Don Juan de Austria," "Isla de Cuba," "Isla de Luzon," etc.	No. 656.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MOTION TO ADVANCE.

Now comes the Solicitor-General, in behalf of the United States, with the concurrence of all the counsel representing the various parties to the above-entitled

causes, and moves the court to advance these causes upon the docket, and to set them down to be heard together at as early a date as may suit the convenience of the court, for the following reasons:

(1) The above appeals have been taken from decrees of the supreme court of the District of Columbia, holding a special term as a district court of the United States, entered July 31, 1901, and November 5, 1901, respectively, in the respective prize causes of *William T. Sampson, rear-admiral, U. S. Navy, etc.*, v. *The Spanish vessel of war "Infanta Maria Teresa," etc.*, and of *George Dewey, Admiral U. S. Navy, etc.*, v. *The Spanish vessel of war "Don Juan de Austria," etc.* The questions of law involved in the appeals of the *United States* v. *Sampson*, No. 597, and *The United States* v. *Dewey*, No. 654, are practically the same, while the case of *Dewey* v. *The "Don Juan de Austria," etc.*, No. 655, is practically a cross appeal, relating to certain other legal questions not involved in the Sampson case. The case of *Edwin F. Stovell, intervenor*, v. *George Dewey, etc.*, No. 656, concerns the right of certain parties to share in the fund to be distributed.

(2) All these appeals relate to property alleged to have been captured at the battles of Manila Bay and off Santiago nearly four years ago. The delay in reaching this court has been inevitable, owing to the character of the causes and the amount of evidence which had to be procured, but it has been none the less a hardship to the officers and men concerned to have their claims for prize money remain so long un-

settled. This is especially true in the Dewey case, where it is conceded that a portion of the prize money claimed should in any event be recovered.

(3) Owing to the fact that the term of service of enlisted men in the Navy is comparatively short, and that those who leave the service rarely remain in any one place, but make voyages all over the world in pursuance of their calling, it is difficult for the Navy Department to keep track of them, so that delay in the adjustment of claims for prize money increases the work of the Department, and sometimes even makes it impossible to find the men to whom prize money is due, or their representatives in case of their death.

(4) The amount involved herein is between $1,500,000 and $2,000,000, and those directly interested in its distribution number between 3,000 and 4,000 persons.

(5) The cases are of general public interest.

JOHN K. RICHARDS,
Solicitor-General.

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Office Supreme Court U. S.
FILED
OCT 29 1902
JAMES H. McKENNEY,
Clerk.

No. 273.

Motion for substitution &c.

IN THE

Supreme Court of the United States.

October Term, 1902.

Filed Oct. 29, 1902.

THE UNITED STATES, Appellant, vs. WILLIAM T. SAMPSON, Rear-Admiral, U. S. Navy, etc.	No. 273.

Motion for Substitution as Appellees (Libellant.)

Now come Robley D. Evans, Rear-Admiral, U. S. Navy; Henry C. Taylor, Rear-Admiral, U. S. Navy; Charles S. Cotton, Rear-Admiral, U. S. Navy; French E. Chadwick, Captain, U. S. Navy; Joseph G. Eaton, Captain, U. S. Navy; Lucien Young, Commander, U. S. Navy; and Alexander Sharp, Jr., Lieutenant-Commander, U. S. Navy, and show the court:

I. On July 3, 1898, the petitioner Robley D. Evans was the commanding officer of the U. S. S. *Iowa*, which participated in the captures that are drawn in question in this cause, and makes this petition in behalf of the officers and enlisted men of his said command. The petitioner Henry C. Taylor was the commanding officer of the U S. S. *Indiana*, which participated in the said captures, and makes this petition in behalf of the officers and enlisted men of his said command. The petitioner

Charles S. Cotton was the commanding officer of the U. S. S. *Harvard*, and makes this petition in behalf of the officers and enlisted men of his said command. The petitioner French E. Chadwick was fleet captain or chief of staff of the late Rear-Admiral William T. Sampson, U. S. Navy, then Commander-in-chief of the U. S. naval force on the North Atlantic Station, to which the U. S. vessels herein named were attached, and is the only surviving fleet officer of that force. He was also the commanding officer of the U. S. flagship *New York*, which participated in the said captures, and makes this petition in his own behalf and in behalf of the officers and enlisted men of the said fleet who participated in the said captures, including those of his said command. The petitioner Joseph G. Eaton was the commanding officer of the U. S. S. *Resolute*, and makes this petition in behalf of the officers and enlisted men of his said command. The petitioner Lucien Young was the commanding officer of the U. S. S. *Hist*, which participated in the said captures, and makes this petition in his own behalf and in behalf of her officers and men. The petitioner Alexander Sharp, Jr., was the commanding officer of the U. S. S. *Vixen*, which participated in the said captures, and makes this petition in his own right and in behalf of her officers and men.

II. These petitioners have consented to the substitution of Elizabeth B. Sampson, Administratrix of William T. Sampson, late a Rear-Admiral of the U. S. Navy, deceased, as *appellee* (libellant), in this cause, but in the event that this honorable court shall consider it neces-

sary for an officer or officers of the Navy to appear herein as *appellees* (libellant), they pray the court that they or any one or more of them may be admitted as party or parties *appellee* (libellant) to prosecute the cause on his or their own behalf and on behalf of all others concerned therein and entitled to participate in any prize money which may be awarded to the captors.

III. These petitioners do severally and jointly agree that if they, or any one or more of them, are admitted as parties libellant to prosecute this cause, they will hold themselves responsible for any costs which may be awarded therein against them.

JOHN SIDNEY WEBB,
Of counsel for Rear-Admiral Robley D. Evans, U. S. Navy.

GEORGE A. KING,
WM. B. KING,
Of counsel for Rear-Admiral Henry C. Taylor, Commander Lucien Young and Lieutenant-Commander Alexander Sharp, Jr., U. S. Navy.

WILLIAM E. HARVEY,
Of counsel for Rear-Admiral Charles S. Cotton and Captain Joseph G. Eaton, U. S. Navy.

JOS. K. MCCAMMON,
JAMES H. HAYDEN,
Of counsel for Captain French E. Chadwick, U. S. Navy.

I assent to the foregoing action.

HENRY M. HOYT,
Assistant Attorney General.

Memorandum in Support of Motion.

The fleet which took part in the engagement off Santiago de Cuba on July 3, 1898, was under the command of Rear-Admiral William T. Sampson, U. S. Navy, the libellant. The fleet captain or chief of staff was Captain French E. Chadwick. There were no other fleet officers. Under the law and regulations for the government of the Navy, provision is made for the officers of fleet commander and fleet captain. These officers alone are entitled to share in all prizes taken by any vessel or vessels of the fleet, and this right is in nowise dependent upon presence of either at the time of the capture. The incumbent of neither office has any pecuniary concern in the distribution of the prize money among various vessels of the fleet asserting claims thereto. (*R. S. U. S. Sec., 4630*). This undoubtedly was the reason which led the courts in earlier cases to adopt the practice of permitting the fleet commander to file a libel in his own behalf and in behalf of all of his officers and men who might appear to be entitled to a distributive share of the prize money. (*Farragut* vs. *U. S., 22 Wall., 406*). In the absence of the fleet commander, the fleet captain or chief of staff is the only person who possesses this qualification.

In the engagement, Rear-Admiral Winfield S. Schley had command of a squadron or division of the United States fleet. His command did not extend to certain of the vessels which participated, and under the statute, his right to share in prizes is limited to captures made by vessels of his division. He is not now qualified to represent all officers and men who took part in the en-

gagement off Santiago, because he did not have command of the entire fleet on that occasion.

If the court considers that one officer of the Navy should be selected to represent all officers and men concerned, as the libellant in this cause, the choice should fall upon Captain Chadwick. If, however, the court is of the opinion that several officers may with propriety be named as parties libellant, it is suggested that these petitioners, each one of whom had command of a vessel which participated in the said engagement, may be selected; each to appear in his own behalf and in behalf of the officers and men of his command and that of all others concerned in the outcome of the cause.

These petitioners are represented by counsel, and, if admitted to appear in the cause as parties thereto, they will jointly and severally stand answerable for any costs which may be awarded against them therein.

The determination of this question is respectfully submitted to the Court.

JAMES H. HAYDEN,
Of Counsel for Libellant (*Appellee*).

23813

Office Supreme Court U. S.
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OCT 29 1902
JAMES H. McKENNEY,
Clerk.

No. 273.

Petition for substitution &c.

Filed Oct. 29, 1902.

Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, Appellant,

vs.

WILLIAM T. SAMPSON, Rear Admiral U. S. Navy, etc.

No. 273.

Petition for Substitution as Appellee (Libellant).

Now comes Elizabeth B. Sampson and shows the court that William T. Sampson, late a Rear Admiral of the U. S. Navy, and the libellant named in the above-entitled cause, departed this life on the 6th day of May, 1902, which fact was suggested to the court by the Attorney-General on the 19th day of May, 1902, and that the petitioner has been appointed administratrix of the estate of the said William T. Sampson: Wherefore the

petitioner prays that she may be substituted in the said cause as appellee (libellant) and authorized to prosecute the same.

JOS. K. MCCAMMON,
JAMES H. HAYDEN,
Of Counsel for Elizabeth B. Sampson.

We assent to the forgegoing petition.

HENRY M. HOYT,
Assistant Attorney-General for the United States.

JOHN SIDNEY WEBB,
Of Counsel for Rear Admiral Robley D Evans, U. S. Navy.

GEORGE A. KING,
WM. B. KING,
Of Counsel for Rear Admiral Henry C. Taylor, Commander Lucien Young, and Lieutenant-Commander Alexander Sharp, Jr., U. S. Navy.

MCCAMMON & HAYDEN,
Of Counsel for Captain French E. Chadwick, U. S. Navy.

BRIEF IN SUPPORT OF THE MOTION.

On July 31, 1899, the libel herein was filed in the court below by Rear-Admiral William T. Sampson. He sued as an individual and also as the Commander-in-Chief of the United States Naval force on the North Atlantic Station. He appeared in his own behalf and in behalf of all the officers and enlisted men of the United States fleet under his command, which, on July 3, 1898, fought a naval engagement with a Spanish fleet off Santiago de Cuba, and therein captured property which is claimed as prize in this suit. In this respect the practice adopted in earlier prize cases was followed. (*Farragut* vs. *U. S.*, 22 Wall., 406.) As the libellant in the cause, Admiral Sampson assumed the responsibilities incident to its prosecution, including responsibility for such costs, if any, as might be awarded against the libellant. If such costs should be awarded, his estate would be liable for the amount. It appears, therefore, that his personal representative is the proper person to substitute for him, as the libellant in this cause.

Counsel assenting to this motion represent the fleet captain or chief of staff of the late Rear-Admiral Sampson; also the commanding officers of the U. S. S. *New York*, *Iowa*, *Indiana*, *Hist*, and *Vixen*, all of which participated in the said engagement and the captures made therein.

JAMES H. HAYDEN,
Of Counsel for Elizabeth B. Sampson,
Administratrix.

29882

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT,
v.
WILLIAM T. SAMPSON, REAR-ADMIRAL, United States Navy, et al.
No. 597.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

APPELLANT'S BRIEF ON MOTION TO DISMISS.

The motion to dismiss the appeal of the United States in this case is eminently proper, and in fact inevitable, in view of the action of the court of appeals of the District of Columbia upon the motion to dismiss the appeal of the United States taken to that court. The chief justice of the court of appeals is really the only member of that court who holds that an appeal from a decree of the supreme court of the District of Columbia in a prize case should be taken to this court and not to the court of appeals. Mr. Justice Shepard dissented absolutely, while Mr. Justice Morris stated that he was not satisfied that the court of appeals had not jurisdiction to entertain the appeal, but would concur in the chief justice's opinion in order that this court might determine the matter

positively. It is to secure such a determination in the simplest and speediest way that the counsel for the appellee have made this motion.

The appeal of the United States from the decree of the supreme court of the District of Columbia was taken first to the court of appeals of the District of Columbia because the letter of the statute so required, and the counsel for the United States did not feel justified in such a case in putting an interpretation upon the statute at variance with its letter. Now, however, that the court of appeals has decided, at least *pro forma*, that the appeal should be taken directly to this court, it is submitted in behalf of the United States that such an appeal should be entertained.

As the opinion of the chief justice of the court of appeals contains a very full discussion of the whole matter, it is herewith submitted.

ALVEY, chief justice:

This appeal is brought into this court from the decree passed in the court below sitting in special term as a district court of the United States for the District of Columbia, and the decree appealed from is one of condemnation of certain property captured and claimed as lawful prize of war. By the libel it is alleged that the Spanish cruiser *Infanta Maria Teresa* was captured in the naval engagement fought off Santiago, Cuba, on July 3, 1898, and that certain guns and munitions of war were also captured on and taken from other Spanish vessels which were sunk or destroyed in the engagement, all of which captures, as alleged, were condemnable as lawful prize of war.

The United States appeared to the proceeding and filed an answer to the libel; and by the answer it is denied that the property captured is liable to condemnation; or if condemnable it is denied that the captors are entitled to receive a moiety of its value. Evidence was produced, and upon hearing a decree of condemnation was entered. On the question of prize or no prize the decree of condemnation is in the nature of a final decree, and therefore subject to the right of appeal. There being doubt, however, in the minds of counsel or proctors of the parties, as to what court the appeal would lie, there were two appeals entered, one to the Supreme Court of the United States and the other to this court. The transcript having been brought in, the appellee, the libellant in the court below, has moved that the appeal to this court be dismissed, upon the ground that it does not properly lie to this court.

I do not understand that there is any question made as to the want of competent jurisdiction of the justice of the supreme court of the District, holding the special term at which the appeal decreed from was made, to take cognizance of the libel and to adjudicate the question of prize or no prize, and to enter a decree accordingly.

This power and jurisdiction are supposed to be conferred by the language employed in section 762, Revised Statutes, District of Columbia, which is as follows:

"That any one of the justices may hold a special term, with the same powers and jurisdiction

possessed and exercised by district courts of the United States."

This is the substitute, as provided in the Revised Statutes, for the old and independent district court of this District, established under the act of Congress of 1802. (*Ex parte Bradley*, 7 Wall., 364, 371.)

The district courts of the United States have been, since the organization of the Government, invested with the powers and original jurisdiction over captures and seizures as subjects of prize. By the judiciary act of the 24th of September, 1789 (C. 20, sec. 9), they were invested with exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under imposts and navigation or trade laws of the United States, where the seizures are made upon the high seas, and also of all other seizures made under the laws of the United States (1 Kent Com., 304). If, therefore, the justice holds the special term of the supreme court of the District, as a district court, with *the same powers and jurisdiction possessed and exercised by other district courts of the United States*, it would seem to be too clear for any question to be made that the special term so held for the exercise of the jurisdiction designated must be regarded and treated as a prize court in the same sense and to the like extent as the other district courts of the United States.

Assuming, then, as clear that the justice holding the special term had ample jurisdiction to adjudicate the question of prize or no prize, and to enter a decree of condemnation. the

question then arises, To what court does the right of direct appeal exist from such decree of condemnation? It is not pretended that there is any concurrent right of appeal in such case to different courts. The right of appeal from the district courts in matters of prize has been direct to the Supreme Court of the United States down to the time of the passage of the act of Congress of February 9, 1893, and is direct to that court still in all cases, unless it be changed or modified as to the District of Columbia by the act of February 9, 1893.

Whether this act of 1893, as to the District of Columbia, has affected such change in the right of appeal depends upon the language of the preexisting general statutes, upon the subject, as well as upon that of the act of 1893. It is therefore necessary to refer specially to the several provisions of the statutes regulating the right of appeal from decisions in cases of prize.

The Revised Statutes, United States, title Judiciary, provides:

"SECTION 695. An appeal shall be allowed to the Supreme Court from all final decrees of any district court in prize causes where the matter in dispute, exclusive of costs, exceeds the sum or value of $2,000; and shall be allowed, without reference to the value of the matter in dispute, on the certificate of the district judge that the adjudication involves a question of general importance. And the Supreme Court shall receive, hear, and determine such appeals, and shall always be open for the entry thereof."

Section 698 provides for transmitting to the Supreme Court a transcript of the record and

proofs in cases of prize or no prize; and also provides that new evidence in admiralty and prize causes may be received in the Supreme Court. And by section 1009 it is provided that "Appeals in prize causes shall be made within thirty days after the rendering of the decree appealed from, unless the court previously extends the time, for causes shown in the particular case: *Provided*, That the Supreme Court may, if in its judgment the purposes of justice require it, allow an appeal in any prize cause, if it appears that any notice of appeal, or of intention to appeal, was filed with the clerk of the district court within thirty days next after the rendition of the final decree therein."

It then appears that all appeals from the district courts in matters of prize were direct to the Supreme Court of the United States prior to the act of Congress of March 3, 1891, entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes." By the fifth section of that act it is provided "that appeals or writs of error may be taken from the district courts or from the existing circuit courts *direct* to the Supreme Court in the following cases," and among the cases enumerated as appealable *directly* to the Supreme Court is that "from the final sentences and decrees in prize causes."

This statute, as it applies to appeals in cases of prize, was subjected to critical examination in the light of all existing legislation upon the subject by the Supreme Court in a prize pro-

ceeding in the case of *The Paquete Habana* (175 U. S., 677). In that case it was held that the Supreme Court of the United States has, by virtue of this statute, jurisdiction of appeals from *all final sentences and decrees in prize causes, without regard to the amount in dispute*, and without any certificate of the district judge as to the importance of the particular case. It construed the statute as being a full and complete regulation of the subject, and *as exclusive* of all other regulations of the particular class of cases provided for. In stating the conclusion upon the examination of the statute, the court said:

"We are of opinion that the act of 1891, upon its face, read in the light of settled rules of statutory construction and of the decisions of this court, clearly manifests the intention of Congress to cover the whole subject of the appellate jurisdiction from the district and circuit courts of the United States so far as regards in what cases, as well as to what courts, appeals may be taken, and to supersede and repeal to this extent all the provisions of earlier acts of Congress, including those that imposed pecuniary limits upon such jurisdiction; and as part of the new scheme to confer upon this court jurisdiction of appeals from all final sentences and decrees in prize causes, without regard to the amount in dispute, and without any certificate of the district judge as to the importance of the particular case."

It is conceded that if the right of appeal had to be determined according to the act of March 3, 1891, as construed by the Supreme Court,

the appeal would have to go to that court, if to any final court of review, sitting as the highest prize court of the United States. But it is contended on behalf of the United States that the act of March 3, 1891, had been changed or modified, so far as the District of Columbia is concerned, by the subsequent act of Congress of February 9, 1893, providing for the organization of this court. It is contended that by the general and comprehensive terms employed in section 7 of this latter act of 1893, declaring "that any party aggrieved by any final order, judgment, or decree of the supreme court of the District of Columbia, or of any justice thereof, may appeal therefrom to the court of appeals hereby created; and upon such appeal the court shall review such order, judgment, or decree, and affirm, reverse, or modify the same as shall be just," the present appeal is fully authorized, and that it is properly here. It must be observed, however, that this general provision of the act of 1893 makes no mention or reference to appeals in cases of prize, which have always been regulated by special provision; and as Congress had only recently before the passage of the act of 1893 made special and particular provision for the exercise of the right of appeal from the final sentences and decrees in all cases of prize directly to the Supreme Court of the United States—that tribunal which has from the commencement of the Government most appropriately exercised such appellate jurisdiction—it is difficult to suppose that Congress intended to change or modify to any extent,

by mere implication, the general rule prescribed, and to make for this jurisdiction alone a special and different rule from that which applies to all the rest of the country. There is really no repugnancy between the acts; and the principle of construction is well settled that repeals by implication are never favored unless conflict or repugnancy is manifest. As said by the Supreme Court in the case of *McCool* v. *Smith* (1 Black, 459, 470), "The leaning of the courts is against the doctrine of implied repeal, if it be possible to reconcile the two acts of the legislature together." It is but a reasonable presumption that the legislature did not intend to keep really conflicting enactments in the statute book, or to affect so important a measure as the repeal of a law without expressing an intention so to do. Such an interpretation, therefore, is not to be adopted unless it be inevitable. (*United States* v. *Walker*, 22 How., 299; *United States* v. *Sixty-seven Packages*, 17 How., 85.)

It has been decided in many cases, and the principle is laid down as unquestionable in text-books of high authority, that a general statute without negative words will not repeal the particular provisions of a former statute unless the two acts are irreconcilably inconsistent. (Dwarris on Stats., 532; Sedgw., Stat. and Const. Law, 123; *Brown* v. *County Com.*, 21 Pa., 37.) The reason and philosophy of the rule are stated to be that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute

in general terms, or treating the subject in a general manner, and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction in order that its words shall have any meaning at all. There are many instances to be found in the books of the application of this rule of construction; as, for example, where an act of Parliament had authorized individuals to inclose and embank portions of the soil under the river Thames, and had declared that such land should be "free from all taxes and assessments whatsoever." The land-tax act, subsequently passed, by general words embraced all the land in the Kingdom, and the question arose whether the land mentioned and exempted by the former act had been legally taxed; and the Court of King's Bench held that the tax was illegally assessed. Lord Chief Justice Kenyon said:

"It can not be contended that a subsequent act of Parliament will not control the provisions of a prior statute, if it were intended to have that operation But there are several cases in the books to show that where the intention of the legislature was apparent that the subsequent act should not have such an operation, then, even though the words of such statute, taken strictly and grammatically, would repeal the former act, the courts of law, judging for the benefit of the subject, have held that they ought not to receive such a construction."

(*Williams* v. *Pritchard*, 4 D. and E., 2; Dwarris on Sats., 514.)

As I have said, there is no conflict or repugnancy whatever between the act of 1891 and that of 1893; but there is even a stronger reason for supposing that the general rule prescribed by the former act was not intended to be changed or modified, as applied to the courts of this District, by the subsequent act of 1893, than the mere absence of conflict or repugnancy between the two acts; and that is, the effect in the ultimate right of appeal, produced upon the judgment on appeal to this court. We can not suppose it to have been the intention of Congress in passing the act of 1893 to give the right of appeal to this court in cases of prize, and to make the judgment on such appeal final and conclusive in all cases where the amount in dispute is $5,000 or less; and thus preclude the right of review in such cases by the Supreme Court—the highest prize court of the country. But such would appear to be the effect of an appeal to this court. For by section 8 of the act of 1893, it is provided "that any final judgment or decree of the said court of appeals may be reexamined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in all cases in which the matter in dispute, exclusive of costs, shall exceed the sum of $5,000, in the same manner and under the same regulations as heretofore provided for in cases of writs of error on judgments or appeals from decrees, rendered in the supreme court of the District of Columbia,

and also in cases, without regard to the sum or value of the matter in dispute, wherein is involved the validity of any patent, or copyright, or in which is drawn in question the validity of a treaty or statute of or an authority exercised under the United States." The right of appeal thus given from the judgments or decrees of this court to the Supreme Court of the United States, is upon terms and conditions quite different from the right of appeal in prize cases to the Supreme Court, under the act of 1891. Under this latter act the right of appeal in all cases is given to the Supreme Court without regard to the amount in dispute; but, as we have seen, the right of appeal from this court to the Supreme Court, with certain exceptions that do not apply here, can only be exercised where the amount in dispute exceeds $5,000. This eighth section of the act of 1893 embraces all the cases, or class of cases, in which an appeal can be taken to the Supreme Court from this court; and I am very clearly of opinion that this general provision does not, and was not intended to, embrace appeals from this court to the Supreme Court in prize cases.

It is suggested that the special term, exercising the same powers and jurisdiction possessed and exercised by the district courts of the United States, is not a district court of the United States in the sense and meaning of the district courts mentioned in section 5 of the act of March 3, 1891, and from which appeals are given to the Supreme Court of the United States, and hence no appeal will lie to the latter court from a

decree passed at the special term under the act of 1891. But that construction is certainly too restricted and narrow to be sound or reasonable, and no authority has been produced to support it. On the contrary, I think there is reliable authority to show that the exercise of the powers and jurisdiction of the district courts of the United States by the justice holding the special term constitutes that court to all intents and purposes a district court, with the powers and jurisdiction of the district courts mentioned in the fifth section of the act of 1891.

The superior courts of general jurisdiction of the District of Columbia have been repeatedly held to be courts of the United States as distinguished from mere territorial courts. But whether the court belongs to the class of inferior courts provided for by the Constitution, or belongs to the class of territorial courts that Congress may provide for and establish in the organization of territorial government, can make no difference in the right of appeal in a case like the present. The question is, What jurisdiction has been conferred upon the court, and how that jurisdiction is to be exercised. (*In re Cooper*, 143 U. S., 472, 494, 512.)

In the case of *Durousseau* v. *United States* (6 Cranch, 307), the question presented was quite analogous to that presented in this case, as to the manner of conferring jurisdiction. In that case the act of Congress erecting Louisiana into two territories established a district court in the Territory of Orleans, consisting of one judge, who, as it was declared, "shall, in all

things, have and exercise the same jurisdiction and powers which are by law given to, or may be exercised by, the judge of Kentucky district." On writ of error to the district court for the district of Orleans, it was contended, on behalf of the United States, that the Supreme Court had no jurisdiction over the case, because there could be no writ of error to or appeal from the decisions of such district court of Orleans to the Supreme Court, such right of appeal not having been specially provided for. But that contention was not supported by the Supreme Court, and the motion to dismiss was denied, the court holding that the writ of error would lie to the Orleans district court the same as to the Kentucky district court. The court said that the contention of the United States was founded upon an alleged restriction of the right to writ of error to the district court, but that such implication ought not to be made for the purpose of defeating the intent of the legislature. The decision in that case shows that it is competent to the legislature to provide that the nature and extent of the judicial power conferred upon a particular court shall be ascertained and measured by reference to that conferred upon another court, and that the classification and denomination of the court will be according to the nature and extent of the powers and jurisdiction with which it may be thus invested.

Upon full consideration, I am of opinion, for the reasons stated, that this appeal has been improvidently and without legal warrant taken to this court, and it must, therefore, be dismissed.

> But, with a view of preserving the appeal taken to this court, in the event that the Supreme Court should decide that such appeal was rightfully taken to this court and not to the Supreme Court direct, I think it would be proper to withhold the order dismissing the appeal until the question can be passed upon by the Supreme Court on an appeal from the district court, unless it be desired by the appellant to take an appeal to the Supreme Court from the order dismissing this appeal, in which case the order of dismissal will be entered at once.

The concurring opinion of Mr. Justice Morris reads as follows:

> Mr. Justice MORRIS concurring:
>
> In these cases I am not satisfied that we have not jurisdiction. But to hold that we have jurisdiction would be to deny the jurisdiction of the Supreme Court of the United States. If such holding be the correct one, I prefer that it should come from the Supreme Court, and not from us. It seems to me to be appro[illegible]iate that, where there is a doubt, that high tribunal should itself determine the point. Moreover it would seem that by our denial of our own jurisdiction at this time the interests of justice would be best subserved. For these reasons I concur with the chief justice in the ruling that the appeals in these cases lie directly to the Supreme Court of the United States, and not to this court.

In addition to what the learned chief justice of the court of appeals has said, the following may also be suggested.

The act of June 30, 1864 (13 Stats., 306), is entitled "An act to regulate prize proceedings and the distribution of prize money, and for other purposes." This act was obviously intended as a comprehensive law upon the whole subject of prize, including the legal proceedings in regard thereto in so far as they were not expressly covered by the then existing general laws regulating proceedings in the courts of the United States. The provisions of this statute, which contains thirty-five sections, are very full and complete, and it is evident that Congress intended in this act to regulate all proceedings in prize, in whatever court such proceedings might be brought.

The thirteenth section of this act provides as follows:

> SEC. 13. *And be it further enacted*, That appeals from the district court of the United States in prize causes shall be directly to the Supreme Court, and shall be made within thirty days of the rendering of the decree appealed from, unless the court shall have previously extended the time for cause shown in the particular case, and the Supreme Court shall always be open for the entry of such appeals. Such appeals may be claimed whenever the amount in controversy exceeds two thousand dollars, and, in other cases, on the certificate of the district judge that the adjudication involves a question of general importance.

When this act became a law, the courts in the District of Columbia were regulated by the act of March 3, 1863 (12 Stats., 762), the fourth section of which provided that "any one of said justices may hold a

district court of the United States for the District of Columbia in the same manner and with the same powers and jurisdiction possessed and exercised by other district courts of the United States."

In view of the fact that the act of 1864 was obviously intended to provide for all prize proceedings, whether in the "district court of the United States for the District of Columbia," or in the "other district courts of the United States," it is evident that the words of section 13, "appeals from the district courts of the United States in prize causes shall be directly to the Supreme Court," were intended to apply to prize proceedings in the District of Columbia as well as elsewhere. In so far, therefore, as this provision may have been in conflict with the general provisions of the act of 1863 in regard to appeals from a decree of a justice of the supreme court of the District of Columbia holding a district court of the United States, it must necessarily operate as a repeal *pro tanto*, excepting appeals in prize causes from the general rule in regard to appeals in the supreme court of the District of Columbia, and placing them, along with appeals in prize causes in the "other district courts of the United States," in a new and separate category. Hence, if the present appeal had been taken during the period when the act of June 30, 1864, was in force, it would unquestionably have been properly taken, and the fact that in certain cases relating to prizes taken during the civil war intermediate appeals were taken to the general term of the supreme court of the District of

Columbia merely shows, what this court has already been called upon to notice, that in those proceedings the law was not as carefully considered by the counsel concerned as it might or should have been. (See discussion of *United States* v. *Farragut*, 22 Wall., 406, as contained in the opinion of this court in *Dewey* v. *United States*, 178 U. S., 510, 516.)

When the acts of 1863 and 1864 were respectively reenacted, with only slight verbal changes, in the Revised Statutes (sections 695, 696, 698, 701, 1009; R. S. D. C., 758, 762) there was certainly no intention to change the law in regard to appeals in prize causes in the District of Columbia from what it had been before. These sections had to be construed with reference to each other precisely as those parts of the statutes which were reenacted in them had had to be construed with reference to each other; and hence if this appeal had been taken after the adoption of the Revised Statutes, and before 1891, there can be no doubt that it would have been properly taken.

Section 5 of the act of March 3, 1891, in providing "that appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court in the following cases: * * * from the final sentences and decrees in prize causes," merely reenacted the previously existing law, except apparently in removing the previous limitation as to the amount involved, and it certainly drew no distinction in regard to such causes between the district court of the United States as held in the District of Colum-

bia and other district courts of the United States. Hence, if this appeal had been taken at any time before the passage of the act of February 9, 1893, it is clear that it would have been properly taken. This being so, it is submitted that the learned chief justice of the court of appeals is correct in stating that to construe the act of February 9, 1893, as requiring an appeal from a decree in prize proceedings in the supreme court of the District of Columbia to be taken to the court of appeals of the District of Columbia and not directly to this court, would involve a repeal of the preexisting law by implication, such as Congress could not have intended and such as a court of justice will always seek to avoid.

CHARLES C. BINNEY,
Special Attorney.

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No. 273.

Brf. of Atty. Gen. (Binney & Hoyt)
for United States.

Filed Oct. 22, 1902.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
WILLIAM T. SAMPSON, REAR-ADMIRAL, United States Navy, etc.
} No. 273.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE UNITED STATES.

CHARLES C. BINNEY,
Special Attorney.

HENRY M. HOYT,
Assistant Attorney-General.

In the Supreme Court of the United States.

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WILLIAM T. SAMPSON, REAR-ADMIRAL, United States Navy, etc.
No. 273.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This appeal was taken from a decree of the Supreme Court of the District of Columbia, sitting as a district court of the United States, in admiralty, in a suit in prize brought by William T. Sampson, rear-admiral, United States Navy, in behalf of himself and the officers and men of the naval force on the North Atlantic Station, who took part in the battle off Santiago.

On July 3, 1898, the late Rear-Admiral William T. Sampson, United States Navy, with the fleet under his command, engaged a Spanish fleet consisting of the armored cruisers *Infanta Maria Teresa*, *Cristobal Colon*, *Vizcaya*, and *Almirante Oquendo*, and the torpedo boats *Furor* and *Pluton*, near Santiago de Cuba.

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None of the Spanish vessels was afloat at the close of the action, but as all the armored cruisers had sunk in comparatively shallow water, considerable portions of them remained above the surface. The least injured of all was the *Cristobal Colon*, which was sunk by the Spaniards after it had surrendered, but it lay nearly on its beam ends. The vessel in the next best condition was the *Infanta Maria Teresa*, whose bottom had been pierced by a point of rock, while she was completely burnt out above the protective deck, even the metal work being so thoroughly ruined that complete reconstruction above the protective deck would have been required to make the vessel serviceable. She lay about upright, however, being submerged to about her normal load water line aft and a little less than this forward. (Appx.,[a] 500–511, 573–592; Rec., 84, 150.

On July 5, 1898, Capt. F. E. Chadwick, commanding the flagship *New York*, and in behalf of the officers and men on board, made an application to the Navy Department for the statutory reward for the "destruction of the Spanish fleet," mentioning the *Teresa* along with the other vessels. Similar applications, referring to the "destruction" of the *Teresa*, were subsequently made by the officers in command of the *Brooklyn*, *Texas*, *Indiana*, *Iowa*, *Hist*, *Ericsson*, *Vixen*, and *Suwanee*. Captain Chadwick and other officers testified that they had never doubted that the *Teresa* would be raised. (Rec. 36, 45, 113, 117, 129, 140, 150, 167–173.)

[a] For brevity, the appendix to the report of the Chief of the Bureau of Navigation for 1898, which is by agreement a part of the record in this case, will be referred to in this brief as "Appx."

On July 6, 1898, the Merrick & Chapman Derrick and Wrecking Company contracted with the United States "for raising Spanish war vessels now ashore on the southern coast of Cuba, near Santiago." This contract stated that the United States desired to raise and save as many as possible of the Spanish vessels, and provided that the contractors "upon arrival at the scene of the wreck of the *Cristobal Colon* should at once begin the work of raising that vessel." (Rec., 15.)

On July 6, 1898, a board of eight officers was appointed to make "a thorough examination of the condition of the wrecked Spanish vessels," the orders stating that the possibility of saving any of the vessels was to be considered and reported upon. On July 13, 1898, the board reported that it was "possible and desirable to float the *Infanta Maria Teresa*," and that "if the weather continues favorable the possibilities are good for saving" the *Cristobal Colon*. (Appx., 573–592.)

Soon after this the contractors began work on the *Colon*, and on July 29, 1898, a supplementary contract was made in regard to the work on that vessel. (Rec., 164.)

The protocol of August 12, 1898, provided that "Spain will relinquish all claim of sovereignty over and title to Cuba," and that "upon the conclusion and signing of this protocol, hostilities between the two countries shall be suspended." (30 Stats., 1742.)

Wrecking operations were carried on for some time for the purpose of raising and floating both the *Colon*

and the *Teresa*, but the work on the *Colon* was stopped on or about August 31, 1898, in spite of the protests of Constructor Hobson, and the force was concentrated on the *Teresa*, which was finally floated on September 23, and reached Guantanamo on September 24. She then received certain temporary repairs, and on October 29, 1898, started for Norfolk, Va., in tow of the United States repair ship *Vulcan* and the wrecking tug *Merritt*, and also using her own steam as far as the condition of her engines permitted. On November 1 she encountered a very severe storm, and after some hours, being apparently in a sinking condition, she was cast off, and disappeared in the darkness. She ultimately drifted to Cat Island, where she struck the rocks and became a hopeless wreck. (Appx., 595–602; Rec., 3–31.)

A certain quantity of money and some guns and other property were recovered from the *Teresa*, *Vizcaya*, *Oquendo*, and *Colon*, and were appropriated to the use of the United States.

On July 13, 1899, the Board of Inspection and Survey was directed to appraise the value of the *Teresa* at the time she was raised, and also the value of all the property recovered from her and from the other vessels. On October 10, 1899, the board reported the value of the *Teresa* when raised as $652,497, and the value of the property recovered as $29,367; but this latter amount included $6,200.85 for property to which this libel does not relate. The board's appraisal of the property recovered to which this libel relates was

$23,166.15, but this did not include all the money that had been recovered. The Bureau of Supplies and Accounts estimated the cost of the work done in raising and temporarily repairing the *Teresa* at $188,673.90. (Rec., 1–3, 109.)

On July 17, 1899, the appellee filed a petition in the Court of Claims for bounty under section 4635, Revised Statutes, for the destruction of the *Vizcaya*, *Oquendo*, *Colon*, *Furor*, and *Pluton*, and on June 11, 1900, the Court of Claims found that those vessels had been sunk or otherwise destroyed within the meaning of that statute. (*Sampson* v. *United States*, 35 C. Cls R., 578.)

On July 31, 1899, the libel was filed in the present case, setting up that both the *Teresa* and all property taken upon her, and also that taken from the *Colon* and other sunken vessels, were prize of war and had been appropriated to the use of the United States. Copies of the libel were served on the United States attorney for the District of Columbia and on the Secretary of the Navy, and a rule was issued upon the latter requiring him to show cause why the value of the alleged prize property should not be deposited subject to the order of the court, and why the said property should not be condemned as prize. (Rec., V–VII.) Appearance was subsequently entered in behalf of the United States, and an answer filed denying that the *Teresa* and the other property were subject to condemnation in prize. The Secretary of the Navy also filed an answer concurring in the answer of the United States. (Rec., I, XIII, XV.)

The case having been heard, a decree of condemnation was filed July 30, 1901, to the effect that the *Infanta Maria Teresa* and all the property taken from her and from the other vessels were lawful prize of war, that upon the ascertainment of their value the Secretary of the Navy should deposit the amount with the Treasurer of the United States, subject to the further order of the court, and that the libellant and his officers and men were entitled to receive a moiety of such amount. Whereupon the United States took this appeal. (Rec., 177–198.)

ASSIGNMENTS OF ERROR.

The Supreme Court of the District of Columbia erred:

1. In holding that the Spanish vessel of war *Infanta Maria Teresa*, together with her guns, munitions of war, equipment, stores, money, and other articles, was captured by a fleet of the United States under the command of the libellant under such circumstances that the said vessel and other property should be condemned and forfeited to the United States as lawful prize of war for the benefit of the captors.

2. In holding that certain guns, munitions of war, equipment, stores, money, and other articles on board the Spanish vessels of war *Vizcaya*, *Almirante Oquendo*, *Cristobal Colon*, *Pluton*, and *Furor* were captured by a fleet of the United States under the command of the libellant under such circumstances that the said property should be condemned and forfeited to the United States as lawful prize of war for the benefit of the captors.

3. In holding that the libellant and the officers and enlisted men of the United States Navy who took part in the naval engagement off Santiago de Cuba, and in behalf of whom he brought this suit, are entitled to receive a moiety of the amount of the value of the said *Infanta Maria Teresa*, and of the said guns, munitions of war, equipment, stores, money, and other articles.

4. In not holding that the libel should be dismissed.

BRIEF OF ARGUMENT.

The two principal legal questions involved in this case (viz, first, whether an enemy's vessel of war which has been sunk in action and is not at the close of the engagement in a condition either to serve as a vessel of war or to be sent to a prize court for adjudication, but is afterwards raised and floated by outside parties, acting under a contract with the United States, by means of elaborate wrecking operations, is a prize of war; and secondly, whether property taken from enemy's vessels of war which are admittedly "sunk or otherwise destroyed," within the meaning of section 4635 of the Revised Statutes, is prize property) are also involved in the case of *The United States* v. *Dewey*, No. 309. As the cross appeal of Admiral Dewey (No. 310) involved two other legal questions, and as there were certain fundamental principles which underlay all the questions alike, a complete discussion of the law upon all these points has been given in the brief for the United States in cases Nos. 309 and 310, this arrangement being believed to be for the greater convenience of the court.

1.

THE STATUS OF A VESSEL OF WAR "SUNK OR DESTROYED" IN ACTION AND AFTERWARDS RAISED AND PARTIALLY REPAIRED.

The fundamental principles which underlie both the questions in this case are fully discussed in the brief for the United States in *United States* v. *Dewey*, on pages 8 to 25, and a general discussion of the law in regard to vessels "sunk or otherwise destroyed" is to be found in the same brief, on pages 25 to 54 and 77 to 85. As it is not desired to weary the court with a repetition of those arguments, they will be omitted from this brief, which will be confined to the application of them to the present case. It is true that the argument in the brief in the *Dewey case* is made with reference to vessels which, after being raised, had to undergo "reconstruction," whereas the *Teresa* was merely temporarily repaired at Guantanamo; but it is clear from the evidence that in order to fit her for use as a vessel of war, the use for which she was originally built, she would have required reconstruction to about the same extent, proportionately, as did the vessels which were raised at Manila. The appellee's witness, Hobson, testified that "the conditions were closely similar" in this respect as to all these vessels. (Rec., 154.) The mere fact that the *Teresa* was lost before the necessary reconstruction could begin can not, therefore, distinguish her case, in its legal aspect, from that of the vessels raised at Manila.

It is also true that the argument in the brief in the *Dewey case* is made with reference to the fact that the work of raising the vessels at Manila did not begin until over two months after Spain had, by the protocol of August 12, 1898, relinquished to the United States the right to "occupy and hold" the bay of Manila, whereas the work on the *Teresa* began while the war was still going on. As, however, the libel in the present case was filed on the theory that the *Teresa* was raised and floated, and as this was not done until more than a month after Spain had relinquished "all claim of sovereignty over and title to" the spot where the *Teresa* lay, the mere fact that the contractors did some work upon her before hostilities ceased can not affect the case.

In the naval battle of July 3, 1898, off Santiago, all of the Spanish vessels engaged, viz, the *Infanta Maria Teresa*, *Cristobal Colon*, *Almirante Oquendo*, *Vizcaya*, *Pluton*, and *Furor*, were, it is submitted, "sunk or otherwise destroyed" within the meaning of section 4635 of the Revised Statutes, and the appellee and the naval force under his command were then entitled to bounty under that section on account of all of these vessels. If the *Teresa* had her full complement of men on board (484 men, Rec., 176), this bounty would amount to $48,400 for that one vessel. That all of these vessels except the *Infanta Maria Teresa* were "sunk or otherwise destroyed" was decided by the Court of Claims in *Sampson* v. *United States* (35 C. Cls. R., 578); but that court made no decision as to

the status of the *Infanta Maria Teresa*, and expunged as irrelevant the finding that had been made at the claimant's request in regard to that vessel. Even had the Court of Claims not done so, nothing decided in that case could be *res judicata* in this, because while the parties are the same in both cases the issues are not. There the issue concerned the rights of the claimants as regards certain vessels, while here the issue concerns the rights of the appellee and his officers and men as to another vessel—a totally different issue. It is well settled that identity of issues is essential to the operation of the doctrine of *res judicata*.

In this connection, to prevent any misunderstanding, it is necessary to call attention to certain statements, made as statements of fact, in the brief of the Messrs. King for certain captors. That brief states that the *Vizcaya*, *Oquendo*, and *Colon* were "completely destroyed," and that, on the other hand, the *Teresa* had "run ashore and grounded." In so far as these statements tend to make a distinction between the situation and condition of the *Teresa* on the one hand, and of the three other cruisers on the other, it is submitted that they are very inaccurate and misleading The *Colon* was sufficiently sunk to enable the appellee to recover bounty under section 4635, and the *Vizcaya* and *Oquendo* were sufficiently destroyed to warrant a similar recovery as regards them; but the *Colon* was structurally in far better condition than the *Teresa*, and by the undisputed testimony of two of the appellee's witnesses (Rec., 145, 162) could have been raised if

the Navy Department had seen fit to have it done, while it needs but a glance at the illustrations in the report upon the condition of these vessels (Appx., 572) to see that while the *Vizcaya* and the *Oquendo* were undoubtedly in worse shape than the *Teresa*, the words "run ashore and grounded" were as true of them as of the latter vessel.

Another statement in the same brief (p. 5) is that the *Teresa*, "while still beached, was taken for, and appropriated to the use of, the United States." Similarly, the brief for the appellee (p. 10) refers to the *Teresa* as "appropriated" on July 6, 1898. It is submitted that as regards the time of the appropriation these statements are wholly incorrect. As will be shown below, there could not possibly have been any such appropriation until the vessel was raised; but, without anticipating that argument, it is necessary to traverse at the outset the statement that the *Teresa* was appropriated at any time before she was floated. It is true that the *Teresa* came under the control of the United States at the close of the battle, in the sense that its fleet controlled the waters where the *Teresa* lay on the bottom, but this was equally true of the other Spanish cruisers, which were quite as much under its control as was the *Teresa*, and not more useless to the appellee. Neither he nor the whole fleet which he commanded could have moved the *Teresa* one inch, any more than they could have moved the other vessels.

The acts and declarations of the alleged captors.

At the close of the battle off Santiago the *Teresa* lay on the bottom and was incapable of floating. She lay in shallow water, it is true, but had a good-sized hole in her bottom, and was full of water. She had taken fire during the action, so that practically all her woodwork out of water was destroyed and nearly all the metal work ruined by fire. The fire had not reached her magazine, coal bunkers, or machinery, but only because they were under the water. She had not, like the vessels at Manila, been set on fire after her abandonment by the Spaniards, but the injury by fire was proportionately the same, while the injury due to her sinking was more serious. Moreover, on account of the *Teresa's* great size, the task of raising her was even more completely beyond the power of a naval force unaided by outside parties than was the task of raising the three vessels which were raised at Manila. In short, the status of the *Teresa*, as a vessel "sunk or otherwise destroyed," within the meaning of section 4635 (Rev. Stats.), was as complete as that of the other Spanish vessels which had fought on July 3. If any of them were regarded as possibly not within the category of being "sunk or otherwise destroyed," it was the *Cristobal Colon* only. These facts were recognized in the official dispatches and reports as follows;

> To-day the Spanish squadron, seven in all, including one gunboat, came out of Santiago in column, and was totally destroyed within an hour, excepting *Cristobal Colon*, which was

chased 45 miles to westward * * * but was beached to prevent sinking. (Watson's dispatch, July 3, 1898, Appx. 505.)

I have the honor to make the following report upon the battle with and the destruction of the Spanish squadron commanded by Admiral Cervera, off Santiago de Cuba, on Sunday, July 3, 1898. (Sampson's report, July 15, 1898, Appx. 506.)

The brief examination made yesterday of the *Infanta Maria Teresa* and *Oquendo* has made it apparent that a thorough examination of the condition of the wrecked Spanish vessels, of the effect upon them of gun fire, of combustible materials and explosives, should be made and fully reported upon. You are therefore appointed a board for this purpose, and will immediately proceed to make this examination of the three vessels of war beached and burned, and also of the sunken vessel, the *Cristobal Colon*, which lies at Rio Tourquino, 48 miles west of Santiago. The principal interest in the examination of the *Cristobal Colon* will be to form an opinion as to the feasibility of raising and saving her. The possibility of saving any of the other ships will also be considered and reported upon. It is thought that the *Maria Teresa* is probably uninjured below the water line, and may be floated and repaired. (Sampson's orders of July 6, 1898, Appx. 573.)

The board appointed by the orders just quoted was officially known as "The board on condition of Spanish vessels sunk or destroyed." It examined all ves-

sels and reported on their condition. Its conclusions were stated as follows:

> The board is therefore of opinion that it is possible and desirable to float the *Infanta Maria Teresa.* * * *
>
> The board finds, for the above reason, that it is impracticable to wreck the *Almirante Oquendo.* * * *
>
> The board is therefore of the opinion that it is inadvisable to save the *Vizcaya.* * * *
>
> Taking full account of the conditions of flotation and of the probable condition of structural solidity, it is considered advisable that an effort should be made to raise and save the vessel [*Cristobal Colon*]. * * *
>
> It is therefore impracticable to wreck the *Pluton.* * * *
>
> The considerable depth of water, which is not accurately known, probably precludes the possibility of wrecking her [the *Furor*].
>
> The board recommends that as soon as possible the *Cristobal Colon* should be secured by cables and anchors, so that she can not be moved from her present position. The board recommends that the wrecking companies be directed to arrive at the earliest moment with all facilities possible to wreck the *Cristobal Colon*, and is of the opinion that if the weather continues favorable the possibilities are good for saving the vessel. * * *
>
> The ships *Infanta Maria Teresa*, *Almirante Oquendo*, and *Vizcaya* were destroyed by conflagration, caused by the explosion of shells in the interior and setting fire to woodwork. The

upper decks and all other woodwork are entirely consumed, except at the extremities. (Appx., 574 to 591.)

The language used in these official reports is instructive, as it indicates the meaning attached by naval officers to the word "destroyed." It is evident that the *Infanta Maria Teresa* was regarded as having been destroyed according to the meaning attached to that term by naval officers, although at the same time the same officers referred to the probabilities of raising and saving the vessel, as well as the *Cristobal Colon*, which they usually referred to as having been "sunk." Both the words "sunk" and "destroyed," as used by these officers, refer to conditions not necessarily inconsistent with a vessel being ultimately raised, floated, and repaired.

Moreover, nearly every one of the original applications for bounty, on account of the destruction of the Spanish war vessels off Santiago, speaks of the *Infanta Maria Teresa* as having been destroyed, and not one such application excludes the *Teresa* or suggests that she was a prize. It is true that some of these reports speak of "prize money," instead of "bounty," as due on account of the destruction of these vessels, but as it has been judicially declared that bounty is given "in lieu of" prize money (*Porter* v. *United States*, 106 U. S., 607; see also *The Selma*, 1 Low, 30), the latter expression is scarcely a misnomer, and the important point is that the claims are all the same as regards the *Teresa* as in regard to the vessels which have been judicially held to have been destroyed.

The application of Capt. F. E. Chadwick, of the *New York*, dated July 5, 1898, is as follows:

> List of officers and men attached to and serving on board the U. S. flagship *New York*, showing their exact rank or rating held at the time of the sortie and destruction of the Spanish fleet the *Infanta Maria Teresa*, *Vizcaya*, *Almirante Oquendo*, *Cristobal Colon*, and torpedo boats *Furor* and *Pluton*, under Admiral Cervera, near Santiago de Cuba, July 3, 1898. (Rec., 167.)

A later application of the same officer, dated August 19, 1898, is as follows:

> I have the honor to forward herewith a list of officers and men attached to and serving on board the U. S. flagship *New York*, entitled to share in the prize money accruing from the destruction of the Spanish vessels July 3, the *Infanta Maria Teresa*, *Almirante Oquendo*, *Vizcaya*, *Cristobal Colon*, and the torpedo-boat destroyers *Pluton* and *Furor*. (Rec., 173.)

The application of Capt. F. A. Cook, of the *Brooklyn*, dated July 26, 1898, is as follows:

> List of officers, crew, and marines on board the U. S. flagship *Brooklyn* who assisted in the destruction of the following Spanish vessels: *Infanta Maria Teresa*, *Vizcaya*, *Almirante Oquendo*, *Cristobal Colon*, *Pluton*, and *Furor*, July 3, 1898, Santiago de Cuba, Cuba. (Rec., 167.)

The application of Capt. J. W. Philip, of the *Texas*, is as follows:

> Prize list of the U. S. battleship *Texas*, July 3 and 4, 1898, on which dates the following-

named Spanish ships were destroyed, viz: *Almirante Oquendo*, *Infanta Maria Teresa*, *Vizcaya*, *Cristobal Colon*, *Pluton*, *Furor*, *Reina Mercedes*. (Rec., 169.)

The application of Capt. H. C. Taylor, of the *Indiana*, dated July 25, 1898, is as follows:

> List of officers, crew, and marines on board the U. S. battleship *Indiana* at the time of the action of July 3, 1898, off Santiago de Cuba, resulting in the destruction of the Spanish squadron composed of the *Infanta Maria Teresa*, *Almirante Oquendo*, *Vizcaya*, *Cristobal Colon*, *Pluton*, and *Furor*. (Rec., 168.)

A later application of the same officer, dated January 26, 1899, is as follows:

> SIR: I have the honor to make claim for myself, as the commanding officer of the United States battle ship *Indiana*, for her officers and crew, to share in the prize or bounty money awarded or to be awarded for the destruction of the Spanish ships during the war between the United States and Spain.
>
> The names of the vessels under which we claim such share of bounty or prize money are:
>
> *Infanta Maria Teresa*, at Santiago de Cuba, July 3, 1898; *Vizcaya*, at Santiago de Cuba, July 3, 1898; *Oquendo*, at Santiago de Cuba, July 3, 1898; *Cristobal Colon*, at Santiago de Cuba, July 3, 1898; *Furor*, at Santiago de Cuba, July 3, 1898; *Pluton*, at Santiago de Cuba, July 3, 1898; *Reina Mercedes*, at Santiago de Cuba, July 4, 1898. (Rec., 168.)

The application of Capt. R. D. Evans, of the *Iowa*, dated August 13, 1898, is as follows:

> I forward herewith a list of officers and men of this vessel who took part in the engagement with the Spanish squadron off Santiago de Cuba, on July 3, 1898, and who were present at the time of the destruction of the Spanish vessels *Infanta Maria Teresa*, *Almirante Oquendo*, and *Vizcaya;* also the torpedo-boat destroyers *Furor* and *Pluton*. (Rec., 169.)

The application of Lieut. Lucien Young, of the *Hist*, dated July 25, 1898, was as follows:

> SIR: On behalf of the officers and crew of this vessel I hereby make claim for a proportionate share of any bounty that may be awarded for the destruction of the Spanish fleet off Santiago, Cuba, July 3, 1898.
>
> * * * * *
>
> The vessels destroyed were the *Maria Teresa*, *Vizcaya*, *Cristobal Colon*, *Oquendo* (armored cruisers), and *Pluton* and *Furor* (torpedo-boat destroyers). (Rec., 170.)

The application of Lieut. N. R. Usher, of the *Ericsson*, dated July 19, 1898, was as follows:

> List of officers and crew of the U. S. torpedo boat *Ericsson* present and serving on board and participating in the action which resulted in the complete destruction of the Spanish fleet off Santiago de Cuba, July 3, 1898. (Rec., 171.)

The application of Lieut. A. Sharp, jr., of the *Vixen*, dated July 7, 1898, was as follows:

> I have the honor to submit a complete list of the officers and men of the U. S. S. *Vixen* enti-

> tled to share in the award of prize money due from the destruction of the Spanish fleet under the command of Admiral Cervera, on July 3, 1898. (Rec., 172.)

The application of Lieut. Commander D. Delehanty, of the *Suwanee*, dated August 3, 1898, is as follows:

> SIR: Herewith is a prize list of the officers and crew of this vessel, for a share in prize money for the Spanish ships *Maria Teresa*, *Vizcaya*, *Cristobal Colon*, *Almirante*, *Oquendo*, *Pluton*, and *Furor*, sunk or destroyed on July 3, and for the Spanish cruiser *Reina Mercedes*, sunk on July 5, 1898. (Rec., 172.)

It is submitted that all these officers are so many witnesses, and there can be none better, to the fact that in the United States Navy the word "destruction," as applied to an enemy's vessel of war, especially in connection with section 4635, Revised Statutes, does not mean total or irremediable destruction, but such destruction as renders the vessel incapable either of serving as a part of the enemy's fighting force or of being floated at all by any means available to the naval force which has come into the control of such vessel. Captain Chadwick has testified: "I always regarded her [the *Teresa*] as a ship certainly to be saved. I never had any doubt about that; not the least." (Rec., 36.) And yet, on July 5, 1898, and as late as August 19, he referred to her officially as destroyed, and considered himself entitled to bounty on account of such destruction. Similarly, Captain Taylor testified; "I knew that she could be easily saved and floated; about

that there could be no question. She was perfectly easily saved. I entertained no doubt whatever at any time of this." (Rec., 113.) Yet he, too, both on July 25, 1898, and on January 26, 1899, referred officially to her "destruction," and presented a claim for bounty on that account. The other officers must certainly also have realized when they presented their claims for the destruction of the *Teresa* that the Navy Department would soon have her raised. There was no inconsistency whatever in their then position, which, as far as appears, they maintained until July 15, 1899, when the libellant's counsel made affidavit to a petition in a suit for bounty in the Court of Claims, in which petition it was first stated that the *Teresa* was subject to condemnation in prize. The inconsistency is rather in their now attempting to give a new meaning to the word "destroyed"—the meaning of total and irremediable destruction, which no one had ever thought of before.

In this connection it may be noted that even after the *Teresa* had been floated she was still officially described as a "wreck." The log of the *Vulcan* for September 23, 1898, when convoying the *Teresa* to Guantanamo, states:

> Flagship signaled "Follow the wreck and anchor near her for the night." Came to anchor in the entrance of Guantanamo Bay at 7.05 p. m. Raised anchor and got underway again at 7.20, following the movements of the wreck. (Rec., 4.)

In the brief for the United States in *United States* v. *Dewey*, No. 309 (pp. 57–60), it was pointed out that while a detailed inventory and appraisement was made, by Admiral Dewey's orders, of property which was declared to have been captured at the battle of Manila Bay, and appropriated to the use of the United States, such appraisement being required by section 4624, Revised Statutes, in all cases of appropriation of prize property, yet no such appraisement was made of the *Don Juan de Austria* and the two other vessels which had been sunk and burnt, but afterwards raised and reconstructed. Similarly, in the present case, the libellant failed to require any appraisement of the *Teresa* under section 4624 to be made, as he should have done if the vessel was to be appropriated as prize property.

The acts and declarations of the alleged captors on the one hand and of the United States on the other, in so far as those acts and declarations bear upon the question of whether the *Teresa* was a prize or not, may therefore be summarized as follows:

(*a*) The appellee and one of his immediate subordinates in command each officially reported the *Teresa* as destroyed.

(*b*) Nine of the officers in command of vessels of the appellee's fleet applied, in behalf of the officers and men of their respective vessels, for the statutory reward for the destruction of the *Teresa*, such applications being made from time to time within two months after the battle, and in one instance more than six months after it.

(*c*) None of the alleged captors asserted any rights in the *Teresa* as captors until about July 15, 1899, more than a year after the battle, when the appellee's counsel made affidavit to a petition in the Court of Claims, wherein it was averred that the *Teresa* was taken as a prize.

(*d*) After the close of the battle none of the alleged captors ever, at any time, did anything themselves, as captors, to the *Teresa* to make it possible to hold her as a prize.

(*e*) The alleged captors did not comply with the requirements of section 4615 in regard to the duties of captors of prizes "not in condition to be sent in for adjudication."

(*f*) The Government did nothing to the *Teresa* which it did not have a perfect right to do, without liability to account for its value if, as a matter of fact, it was not a prize.

As far as all these acts and declarations go, they are clearly consistent only with the theory that the *Teresa* was "sunk or otherwise destroyed," and not a prize.

When the words "sunk or otherwise destroyed" were adopted by Congress in providing for naval bounty, they were presumably understood as having a recognized meaning among seafaring men—the same meaning which the officers evidently attached to them in the reports and applications for bounty above quoted. An enemy's vessel of war was regarded as "sunk or otherwise destroyed" when she was rendered incapable of serving as a vessel of war without extensive recon-

struction, and when, in addition, she could not be made to float without a resort to wrecking operations beyond the power of the naval force on the spot to carry on.

A vessel may be "sunk or otherwise destroyed" although capable of being raised.

It has been judicially determined that the *Cristobal Colon* was "sunk or otherwise destroyed" within the meaning of section 4635, and a judgment has been entered in favor of this appellee and his officers and crew for bounty on account of the destruction of that and other vessels (*Sampson* v. *United States*, 35 C. Cls. R., 578); and yet the board on condition of Spanish vessels sunk or destroyed appears to have regarded the *Colon* as at least as practicable of being raised as was the *Teresa*. It expressly stated that the *Colon* had received no structural injury; that none of her boilers had exploded; and that it was advisable to raise and save her. The testimony of the appellee's own witnesses in the present case is positive and uncontradicted to the effect that the *Colon* could have been raised and saved, and that while the cost of raising and floating the vessel might have been greater than in the case of the *Teresa*, the value of the *Colon* when raised would have been very much greater than that of the *Teresa*.

Lieutenant Capehart testified as follows:

> 22. Cross-question. You have stated that your opinion and the opinion of the board was that the *Teresa* was capable of being raised and saved. Both you and the entire board had the

same opinion in regard to the *Colon*, had you not?

Answer. I do not recollect exactly whether the entire board was of that opinion or not. I know the majority of the board were of the opinion that the *Colon* could have been saved, and I personally never have changed my opinion that she could have been saved. I visited her almost a year after she was wrecked, and she seemed at that time to be perfectly strong to withstand the stress that might be put upon her in raising her. (Rec., 145.)

Naval Constructor Hobson testified as follows:

26. Cross-question. This board of which you were a member, which reported upon these various Spanish vessels, considered that the *Colon* also was a salvable ship, did it not?

Answer. It so reported.

27. Cross-question. That was your opinion, was it not?

Answer. Yes; it so reported, and it was my opinion.

28. Cross-question. It is still your opinion, is it not, that with proper measures the *Colon* might have been floated?

Answer. Yes.

29. Cross-question. About how much do you consider it would have cost to float the *Colon* by proper measures?

Mr. HAYDEN. I object to that as immaterial and irrelevant.

Answer. I estimate that if the first method were successful it would take less than $150,000; if she had to be tried again it would

have taken probably $250,000, and that she could absolutely have been gotten off, bottom up, for less than $400,000 and then turned right side up for $50,000 additional; that it would have been a practical certainty for less than half a million dollars.

30. Cross-question. The *Colon* would have required very much less repair than the *Teresa*, would she not?

Answer. Very much less.

31. Cross-question. So that if the *Colon* had been raised in accordance with your opinion and put in order, her net value, deducting all expenses, would have been much greater than the net value of the *Teresa*, would it not?

Answer. I should say almost double. (Rec., 162.)

The contract made by the Secretary of the Navy with the Merritt & Chapman Derrick and Wrecking Company on July 6, 1898, was made primarily with reference to the *Cristobal Colon*. This contract provides that the company shall at once proceed to Santiago with its wrecking steamer *I. J. Merritt*, with crew and provisions, steam pump, boilers, equipments, fittings, cables, surfboats, steam hoisters, etc., "and, upon arrival at the scene of the wreck of the *Cristobal Colon*, at once begin the work of raising that vessel, with so much of her armament, stores, guns, material, equipments, fittings, appurtenances, and other articles as may be possible to recover, and will prosecute the work with dispatch, carefully, and in a business-like manner, and by all means possible." The same contract stated that

as it was "believed that the *Cristobal Colon* is the least damaged of all Spanish vessels above referred to," the contractor should endeavor first to float her. (Rec., 15.) On July 19, 1898, a supplementary contract was made with the wrecking company in regard to this same vessel, providing that the wrecking steamer *Senior* should at once be sent to Santiago with similar equipment to that required by the first contract, and upon arrival upon the scene of the wreck of the *Cristobal Colon* should at once begin the work of raising that vessel and the arms on board her, as provided in the first contract. (Rec., 164.)

About the last of August, 1898, the work of raising the *Colon* was stopped, in spite of the protest of Naval Constructor Hobson. (Appx., 599.)

In the brief for the United States in *United States* v. *Dewey* (pp. 27–48) it is shown that both bounty and prize money were granted as rewards for the injury inflicted upon the enemy's fighting force, and that section 4635, Revised Statutes, was intended to apply in any case where an enemy's vessel of war had been rendered incapable of serving as a part of the enemy's fighting force, and was no longer afloat, and that the status of an enemy's vessel of war as a prize or as "sunk or otherwise destroyed" must be determined by its condition at the close of the engagement or immediately afterwards. The details of the argument leading to that conclusion need not be repeated here, but the argument is precisely as applicable in the present case as in that of Dewey. At the close of the

battle the status of the *Teresa* was precisely the same as that of the *Colon* and the other wrecks. She lay in shallow water, approximately at her normal load water line, but with a good-sized hole in her bottom, and full of water. She was held fast by a rock which projected through her bottom. Above her protective deck she was so thoroughly ruined by fire as to need complete reconstruction, except probably as regards her turrets. The cost of patching the hole in her bottom, pumping her out and floating her, making temporary repairs, taking her to an American port for permanent reconstruction, and reconstructing her so as to make her once more a fighting vessel, has been variously estimated, but even the appellee's principal witness, Naval Constructor Hobson, estimated this at $1,100,000, or a little over two-fifths of her value when reconstructed and refitted, which he estimated at $2,700,000.[a] (Rec., 157.) Other witnesses put the necessary cost much higher. It would probably have taken at least a year to a year and a half to do this work. Now, a vessel of war which can not be floated and made a part of a fighting force for less than two-fifths (and perhaps considerably more than two-fifths) of her total money value, or within a year to a year and a half, may certainly be said to be "sunk or otherwise destroyed" in a very real sense. Even if the Cuban coast had remained in the possession of Spain, so that the United States could not have raised the *Teresa*, she

[a] There is a typographic error on the second line of page 157 of the record. The figures $2,300,000 should read $2,700,000.

would have been just as useless to Spain, for the purposes of the war, as if she had been annihilated. The service for which bounty is awarded, viz, the injury inflicted upon the enemy's fighting force, was therefore fully performed.

At the close of the battle the status of the *Teresa*, as has been said already, was the same as that of the other Spanish wrecks. Whatever occurred to differentiate the *Teresa* from the others must have occurred later. The act of the Navy Department in putting the Merritt & Chapman Company's force upon her and attempting to raise her could not have changed her status, because it has been judicially determined that the *Colon* was not a prize for the benefit of captors, but was "sunk or otherwise destroyed," in spite of the fact that the Government made two contracts for the raising of the *Colon*, and spent a large sum in the attempt to have her raised. This shows that to make a contract to raise a captured enemy's vessel of war, or even to set a contractor at work to raise her, is not an appropriation of the vessel to the use of the Government, within the meaning of section 4624, Revised Statutes. It is evident that during more than two months and a half, until September 23, 1898, when the *Teresa* was finally floated, her legal status was precisely the same as that of the other Spanish wrecks, for if, before that date, the work of raising her had been finally abandoned, as the work of raising the *Colon* had been, she would manifestly have remained "sunk or otherwise destroyed," and no pro-

29907

ceedings in prize could have been begun. On September 23, 1898, therefore, the *Teresa* became a prize of war, if she ever became such at all, and then, and not before, she was appropriated to the use of the United States. As in the case of the three vessels raised at Manila, if the *Teresa* became a prize, she became so not by naval capture alone, but by naval capture plus the act of a private corporation, which act was not complete until six weeks after hostilities had ceased, and after Spain had agreed to "relinquish all claim of sovereignty over and title to Cuba," including, of course, the spot where the *Teresa* lay. To treat the *Teresa* as a prize is therefore to violate the doctrine of *The Siren* (13 Wall., 389), and also to hold that a captured vessel can become a prize in time of peace, when she had not been a prize during the period of hostilities.

As regards the fact that the *Teresa* could never have been raised, and therefore, as even appellee's counsel will admit, could never have been subject to adjudication as prize, by any act of the captors alone, the case is perhaps even stronger than that of the three vessels raised at Manila. Those were vessels of only 1,030 and 1,130 tons displacement, and their bottoms were intact. It might possibly be contended that the contract with the Hongkong and Whampoa Dock Company was not absolutely necessary as regards the raising, though as that company did, as a matter of fact, do the raising, such a contention would hardly be relevant. In the present case, however, no such contention is possible.

The *Teresa* was a very large vessel, with a fair-sized pinnacle of rock sticking up through a hole in her bottom, and the captors could not possibly have raised her. This is admitted even by the appellee's witnesses. (Rec., 124, 135–136, 157.) Had it not been that there are persons who make a business of doing such work, the vessel would certainly have remained where she lay until she had been knocked to pieces by storms. Whether the wrecking company was needlessly slow in doing the work, or even bungled at it at first, as Mr. Hobson intimates (Rec., 151), is immaterial. What is material is that the work could not have been done without the wrecking company's plant. The fundamental doctrine of the *Siren*, viz, that nothing can be prize which does not become so by the unaided act of a naval force, is therefore utterly at variance with the contention that the *Teresa* was taken as a prize for the benefit of captors.

The brief of counsel for certain captors (p. 11) shows a complete misapprehension of the above argument when it refers to it as "a theory that the *Maria Teresa* was not captured until she was hauled off the beach." The brief for the appellee (pp. 13 to 22) shows a similar misapprehension. The counsel for the Government have never for a moment denied that the *Teresa* was captured at the close of the battle, precisely as the *Colon* was captured (where there was a formal hauling down of the Spanish flag in token of surrender) and precisely as the *Vizcaya* and the *Oquendo* were captured. They all "came within the power and control of the United States" on the 3d of July, and the three last

mentioned remained within that power and control until the United States withdrew from Cuba, and are the property of the United States to this day unless it has recently done anything which could be construed as an act of abandonment.

The argument on the part of the United States as to this point is this:

First. Nothing but capture by a naval force alone, under circumstances which bring the case within the prize statutes, can make a vessel a prize, so that on the question of whether the *Teresa* was a prize the fact of an appropriation by the United States is immaterial.

Second. The *Teresa* was not appropriated, by any species of appropriation applicable to the case of prize property, until September 23, 1898, when she was floated, because the mere attempt to float, even if long continued, as in the case of the *Colon*, is not an appropriation of prize property, the *Colon* having been judicially determined not to have been a prize, though unquestionably captured.

Third. Even if it could be contended that capture plus appropriation can make a vessel prize, when it would not have been a prize had there been no appropriation, they could not do so in this case, because the appropriation, having been made after hostilities ceased and Spain had abandoned all control over the spot where the *Teresa* lay, was not a hostile act, and hence could have no effect in making the vessel prize.

Fourth. Had the *Teresa* not been raised she never could have been claimed to have been a prize, so that,

if a prize, she has not become so by capture alone, but by capture plus raising. But, in the first place, a prize must become so by capture alone, and, in the second place, the raising was not done by those who claim as captors, and nothing but the unaided act of the captors can make a vessel prize.

It will probably be contended that the effect of the raising of the vessel should relate back to the date of its capture; that the captors, having made the capture, were entitled to take their time as to the raising; but this does not overcome the objection that the raising, the act which was essential to the vessel being subject to adjudication as a prize, was not the unaided act of the Navy, but that of an outside party, with some aid from the Navy. Moreover, if the effect of the raising is to relate back, that of the final loss of the vessel should relate back also. It is perfectly evident that the vessel had to be abandoned, and was finally lost, in consequence of the injuries which she suffered during the battle, or, in other words, that the raising was not permanently successful. If it is fair to disregard the period during which the *Teresa* was "sunk or otherwise destroyed," and to treat her as if she had been held as a prize from the first, it is equally fair to disregard the period during which she was again afloat, and to treat her as if she had remained "sunk or otherwise destroyed" from the first, her ultimate destruction being unquestionably due to what took place during the battle.

To argue that the *Teresa* was "sunk or otherwise destroyed" at the battle off Santiago *because* she was

abandoned and wrecked four months later on account of injuries received during the battle, would be clearly absurd. No degree of professional zeal could excuse such an argument; but, it is submitted, it is no more absurd than it would be to argue that she was captured as a prize at that battle *because* nearly three months later a private corporation, acting under a contract with the Government, succeeded in floating her. And yet the latter argument is really the foundation of the appellee's whole case. The contractors were put to work on the *Colon* and the *Teresa*. The *Colon* was not floated, and therefore she remained what she had been from the first, "sunk or otherwise destroyed." The *Teresa* was floated, and therefore she must have been *from the first* a prize, and in no sense "sunk or otherwise destroyed." That is the argument for the appellee.

It is not contended on the part of the United States that either the appropriation of the *Teresa* by the United States when the wreck was finally raised and sent to Guantanamo for preliminary repairs, or the subsequent abandonment of the vessel at sea and her final destruction on Cat Island, have divested the appellee of any right whatever. Had the *Teresa* been a prize, the appellee's rights as captor would not have been changed by the appropriation, and after appropriation it would have made no difference to the appellee whether the vessel was lost or not, as he was not responsible for what became of her. The position of the United States is simply this, that the *Teresa*,

lying in the water with a rock projecting into her, incapable of being floated by any means which the appellee's naval force possessed, and incapable of serving as a vessel of war until after very considerable reconstruction and repair, at a large expenditure of time and money, was "sunk or otherwise destroyed" within the meaning of section 4635 of the Revised Statutes, and was officially recognized as being in that condition. Furthermore, being so "sunk or otherwise destroyed," she could not be a prize for the benefit of the captors, but was the property of the United States, *jure reipublicæ*, just as much so as if she had been captured by a joint naval and military force. (*The Siren*, 13 Wall., 389.) The appropriation was by the right of the United States as sovereign, and not under section 4624 of the Revised Statutes. The appellee is entitled to bounty for the destruction of the *Teresa*, but to nothing more.

2.

THE STATUS OF PROPERTY TAKEN FROM VESSELS "SUNK OR OTHERWISE DESTROYED."

As to the property taken from the *Teresa* and the other wrecks, the reasons why such property can not be prize are fully set out in the brief in *United States* v. *Dewey* (pp. 85–106), and but little need be added in applying the legal doctrines there discussed to the present case.

It has been noted above that apparently no prize rights were ever claimed in the *Infanta Maria Teresa* until the petition in the suit for bounty was drawn up,

more than a full year after the battle; and the case is similar as regards the property taken from the wrecks. Had any prize rights in this property been asserted, an appraisal would have been necessary, under section 4624, at the time of appropriation; but no such appraisal was made in any instance, nor does the record disclose any such assertion of prize rights earlier than the date of the affidavit to the libel, July 16, 1899. Three days before this an appraisal was ordered, but this was long after the appropriation of the property, and it was not the work of the captors, but of the Navy Department. As far, therefore, as the understanding of the parties concerned has any bearing on the case, it is that for more than a year after the battle these parties had always believed that the words "ship or vessel of war belonging to an enemy," in section 4635, were not restricted to the mere shell of the vessel, but were intended to include the armament, outfit, and other appurtenances.

The fact that no appraisal was demanded nor any prize rights in this property asserted at the time of its appropriation is the more significant in view of the fact that the appellee remained in command of the North Atlantic Station during the whole time that this property was being appropriated, and that one of his immediate subordinates, Commodore Watson, had charge of the work carried on by the wrecking company in removing this property from the several wrecks until September 19, 1898, by which time all of it had apparently been removed and appropriated.

Several of his reports relate to such removal and appropriation. (Appx., 597–600.) It can not be contended for a moment that the appellee and those in whose behalf he filed the libel in this case were ignorant of all that was going on; and even if some of them were personally ignorant of it, they would be bound by the acts of the "senior officer present" (who is legally in charge of all prize property, in the interest of the captors), just as stockholders in a corporation are bound by the acts of their officers.

In this connection it may be noted that not a single precedent has been brought forward in support of the contention that property is prize when taken from an enemy's vessel of war for the destruction of which bounty has been paid, although the bounty law had been in force for ninety-eight years, and it is most unlikely that no property ever came into the hands of the United States under such circumstances before. All authority and precedent support the view that the appropriation of the guns and other property was made *jure reipublicae.*

It is therefore submitted that the decree should be reversed both as to the *Infanta Maria Teresa* and as to all the other property.

CHARLES C. BINNEY,
Special Attorney

HENRY M. HOYT,
Assistant Attorney-General.

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Office Supreme Court U.S.
FILED
MAR 24 1902
JAMES H. MCKENNEY,
Clerk.

1 Sup. Ct. 273

Brief of Hayden for Appellee (on motion)

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Mar. 24, 1902.

THE UNITED STATES, CLAIMANT OF THE SPANISH CRUISER "INFANTA MARIA TERESA," ETC.,

APPELLANT,

vs.

WILLIAM T. SAMPSON, REAR ADMIRAL, ETC.

No. 597.

MOTION TO DISMISS THE APPEAL, NOTICE OF MOTION. ADMISSION OF SERVICE.

BRIEF ON THE MOTION.

McCAMMON & HAYDEN,
Proctors for the Appellee.

JAMES H. HAYDEN,
Advocate.

WASHINGTON, D. C.
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1902.

IN THE

Supreme Court of the United States.

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THE UNITED STATES, CLAIMANT OF THE SPANISH CRUISER "INFANTA MARIA TERESA," ETC., APPELLANT,
v.
WILLIAM T. SAMPSON, REAR ADMIRAL, ETC.
No. 597.

MOTION TO DISMISS THE APPEAL.

Now comes the appellee and moves the court to dismiss the appeal herein, for that this court is without jurisdiction to hear the same.

McCAMMON & HAYDEN,
Proctors for the Appellee.

NOTICE OF MOTION.

SIR: Please take notice that on Monday, March 24, 1902, at 12 o'clock noon, or as soon thereafter as counsel can be heard, we shall call up the foregoing motion and submit the same for the judgment of the Supreme Court of the United States thereon.

McCAMMON & HAYDEN,
Proctors for the Appellee.

CHARLES C. BINNEY, ESQ.,
Special Attorney for the United States.

ADMISSION OF SERVICE.

Due service of the foregoing notice and motion is admitted this 20th day of March, 1902.

CHARLES C. BINNEY,
Special Attorney for the United States.

BRIEF ON THE MOTION.

This motion is filed at the request of counsel for the United States (appellant). Various proceedings had in the cause at the instance of the United States make it necessary for the appellee to take some such action in order to prevent a duplication of hearings and unnecessary delay.

But we believe that the appeal has been properly taken and that this motion should be denied.

The appeal runs from a decree of Mr. Justice Bradley of the Supreme Court of the District of Columbia holding a special term. The cause is one in prize. The question at issue was whether the Spanish cruiser "*Infanta Maria Teresa*" and certain guns and munitions of war, captured in the naval engagement between fleets of the United States and of Spain, which was fought off Santiago, on July 3, 1898, were condemnable as prize. The libel was filed by Rear Admiral Sampson, commander-in-chief of the American fleet, acting in his own behalf and in the behalf of the officers and enlisted men of the Navy, who, serving under him, took part in the captures. After the preliminary proceedings, prescribed by law (*R. S. U. S. Sec.* 4625), the United States and the Secretary of the Navy appeared and filed answers, wherein they claimed that the "*Infanta Maria Teresa*" and other property

described in the libel, were not captured under circumstances which warranted their condemnation as prize. Proofs were taken on behalf of all parties. The cause came on for hearing and was submitted on briefs and oral arguments. By the decree it was adjudged that the vessel and other property claimed as prize, be condemned, as such.

Counsel for the United States, entertaining doubt with regard to the appellate jurisdiction in such a case, noted two appeals, one to this court, the other to the Court of Appeals of the District of Columbia. The latter appeal was perfected by the United States and docketed in the Court of Appeals. In behalf of the appellee (libellant) we moved that court to dismiss the appeal for want of jurisdiction, contending that the decree could be reviewed in no way except by a direct appeal to this court. After hearing the Court of Appeals handed down a decision in which it held that the appeal was improvidently taken and should be dismissed, but left it optional with the United States to determine whether an order of dismissal should be entered forthwith or not. The United States asked that no order be entered pending the determination of an appeal which it intended to take from the decree of the district court to this court. The United States being unwilling to bring up and print the whole record until the question of jurisdiction has been decided has filed here a diminished record, containing nothing but the pleadings and the decree of condemnation.

While this is probably sufficient for the purpose contemplated, it certainly would not serve for any other. Hence the appellant's request that we file this motion.

There was no question raised with respect to the jurisdiction of the court below. Sec. 762, R. S. D. C., provides:

> "Any one of the justices (Supreme Court of the District of Columbia) may hold a special term with the same powers and jurisdiction possessed and exercised by district courts of the United States."

The district courts of the United States have exclusive original jurisdiction in prize cases (*Act of September* 24, 1789, 1 *Stat. L.* 84; *The "Paquette Habana,"* 175 *U. S.* 677, 685.)

In many instances a justice of the court below holding a special term, has heard and determined causes in prize. In none of these has the jurisdiction of the court been questioned. (*The "Metropolis,"* 7 *D. C.* 100; *In re Farragut*, 7 *D. C.* 94; *The "Tropic Wind,"* 6 *D. C.* 351; *The "Albemarle," Special Term, District Court, D. C. No.* 146.)

The difficulties experienced by counsel for the United States in deciding where to take the case on appeal grew out of their belief that the act of March 3, 1891, entitled "An Act to establish Circuit Courts of Appeals and to define and regulate, in certain cases, the jurisdiction of the courts of the United States, and for other purposes," and the act of February 9, 1893, entitled "An Act to establish a Court of Appeals for the District of Columbia, and for other purposes," while both applicable to such an appeal as this, were repugnant, and that the later act probably superseded the earlier.

The act of 1891 provides (26 *Stat. L.* 826, 827):

> "Sec. 4. That no appeal, whether by writ or error or otherwise, shall hereafter be taken or allowed from any district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing circuit courts, or of appeals, by writ of error otherwise from said district courts, shall only be subject to review in the Supreme Court of the United States, or in the Circuit Court

of Appeals, hereby established as is hereafter provided, and the review by appeal, by writ of error, or otherwise from the existing circuit courts, shall be had only in the Supreme Court of the United States, or in the Circuit Court of Appeals, hereby established according to the provisions of this act regulating the same."

"Sec. 5. That appeals or writs of error may be taken from the district court, or from the existing circuit court, direct to the Supreme Court in the following cases.

* * * * * * *

"From the final sentences and decrees in prize cases."

* * * * * * *

The act of 1893 provides (27 Stat. L. 434):

"Sec. 7. That any party aggrieved by any final order, judgment, or decree of the Supreme Court of the District of Columbia, or of any justice thereof, may appeal therefrom to the Court of Appeals hereby created, and upon such appeal the Court of Appeals shall review such order, judgment, or decree, and affirm, reverse, or modify the same as shall be just."

If there were no other legislation upon the subject either of these acts standing by itself would probably determine the question. But we have seen that the court below was not exercising jurisdiction peculiarly its own, but jurisdiction belonging exclusively to district courts of the United States, and it was, for the time being, a district court, for the character of a court is to be determined by the jurisdiction which it is authorized to and does exercise. (*In re Cooper*, 143 *U. S.* 472, 494, 512; *Durrousseau* v. *U. S.*, 6 *Cranch*, 307.)

Though the terms of the act of 1893 (Sec. 7) are sufficiently broad to cover any decree entered by a justice

of the Supreme Court of the District of Columbia, it must not be forgotten that the act of 1891 and earlier laws which deal with the adjudication of prizes have always treated such cases as constituting a distinct class, and the provisions with regard to them have been and are in many respects, essentially different, from those governing cases of a less unusual nature. The act of 1893 contains no specific provision with respect to prize cases, and none which can be construed as a repeal of Sec. 5 of the act of 1891. There is no reason to suppose that Congress intended, by the act of 1893, to provide that prize cases, heard in the first instance by a justice of the Supreme Court of the District of Columbia, sitting as a district court, should be treated in a manner different from similar cases heard in any other prize court.

Under the circumstances, it is competent to inquire whether the intent of Congress, to be gathered from the several statutes, can be better effectuated by following the procedure prescribed by the act of 1891, or that prescribed by the act of 1893. By adhering to the procedure laid down by the former act, the decree in question would be treated as a final decree in prize, which it is. For the purpose of this and like cases, the court below would be treated as a district court of the United States, which, in effect, it was. The delay and expense incident to an intermediate appeal, which it was the intention of Congress to prevent in such cases, would be avoided.

In the case of the "*Paquette Habana*" (175 U. S. 677, 685-686), it was argued that the Supreme Court did not possess jurisdiction to hear the case on appeal, because the value of the prize did not exceed two thousand dollars, which had been fixed as the jurisdictional limit in prize cases for purposes of appeal (*R. S. U. S., Sec.* 695). Mr. Justice Gray, delivering the opinion, said:

> "We are of the opinion that the act of 1891, upon its face, read in the light of settled rules of statutory construction and the decisions of this court, clearly manifests the intention of Congress to cover the whole subject of the appellate jurisdiction from the District and Circuit Courts of the United States, so far as regards in what cases as well as to what courts appeals may be taken, and to supersede and repeal, to this extent, all provisions of earlier acts of Congress, including those that imposed pecuniary limits upon such jurisdiction, and as a part of the new scheme, to confer upon this court jurisdiction of appeals from all final sentences and decrees in prize cases, without regard to the amount in dispute."

In the case at bar, as in all prize cases, the value of the property involved is not stated in the libel, nor is it fixed by the decree of condemnation. The value of it is still at issue in the cause, upon which a hearing and decision will not be had until the question of "prize or no prize" has been finally adjudicated. By following the procedure laid down in the act of 1891 the right of appeal to this court would be preserved.

It is true that a number of cases which grew out of captures made during the civil war were heard in the first instance by a justice of the court below holding a special term, and thereafter were heard on appeal by the general term of that court, before appeals were taken to this court, but this was prior to the passage of the act of 1891, of which Mr. Justice Gray said ("*Paquette Habana*," *supra*):

> "But all this (the former scheme of appellate jurisdiction) has been changed by the act of March 3, 1891, establishing the circuit courts of appeals and creating a new and complete scheme of appellate jurisdiction, depending upon the nature of the different cases, rather than on the pecuniary amount involved."

If Congress intended that the appellate jurisdiction of any case should be determined by its subject-matter alone there is no reason to suppose that pecuniary limitations were abolished, while other provisions of law affecting the question were permitted to remain in force.

To hold that a direct appeal to this court can be taken from the present decree, would not imply that a direct appeal must be taken from every decree of a justice of the Supreme Court of the District of Columbia holding a special term, which belongs to one of the classes enumerated in Sec. 5 of the act of 1891. For instance, take "convictions of capital or otherwise infamous crimes," one class of cases wherein appeals must be taken from a district court to this court direct. In such a case a justice of the court below when pronouncing a sentence would not exercise the jurisdiction of a district or circuit court of the United States, but one branch of the jurisdiction, specially conferred upon the Supreme Court of the District of Columbia (Sec. 763, R. S. D. C.).

In admiralty cases, in general, the manner of appeal would not be affected. To be sure, the Supreme Court of the District of Columbia in adjudicating these, does exercise the original jurisdiction conferred upon the district courts of the United States, but under the act of 1891 appeals in such cases must be taken from the district courts to the Circuit Courts of Appeals. The Court of Appeals of the District of Columbia bears the same relation to the Supreme Court of the District of Columbia that the Circuit Courts of Appeals do to the district courts of the United States. Hence the appeal from the Supreme Court to the Court of Appeals of the District of Columbia, would conform to the practice generally followed throughout the country.

Now, let us consider the result of adopting the pro-

cedure laid down in the act of 1893. This would ignore the intent of Congress to regulate appeals according to their subject-matter, irrespective of other conditions. The right of appeal to the Supreme Court would be subject to the pecuniary limitation prescribed by the eighth section of the act, which provides:

> "Sec. 8. That any final judgment or decree of the said Court of Appeals may be re-examined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal in all cases in which the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars." * * *

In this case, where the matter in dispute has no definite and fixed value, this pecuniary limitation would prevent an appeal to this court, if an appeal to the Court of Appeals were proper.

McCAMMON & HAYDEN,
Proctors for Libellant.

JAMES H. HAYDEN,
Advocate.

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No. 294. 293
Off. of Norbert. e Mitchell, Atty
for Certain Interest

Office Supreme Court U. S.
FILED
MAR 24
JAMES H. McKEN

Supreme Court of the United State

OCTOBER TERM, 1901.

Filed Mar. 24, 1902.

THE UNITED STATES, *Appellant*,
v.
WILLIAM T. SAMPSON, Rear Admiral, U. S. Navy.
} No. 597.

Brief In Opposition To Motion to Dismiss for Want of Jurisdiction, Submitted By Leave of Court, By Counsel Other Than Those Appearing for the Appellee Sampson.

In addition to the prize proceeding instituted by Rear Admiral Sampson, a similar proceeding was instituted by Admiral Dewey for captures at Manila, May 1, 1898, that proceeding to final decree *pari passu* with the *Sampson* case and upon this decree appeals were taken as in the *Sampson* case to the Court of Appeals of the District of Columbia and to this court. The record was taken to the Court of Appeals and held there without action, awaiting the decision of the *Sampson* case.

The question of jurisdiction involved on the appeal to that court and on the appeal to this court in the *Sampson* case necessarily also arises in the *Dewey* case. Counsel for Admiral Dewey signing this brief, and counsel for numerous officers and men interested in both the *Sampson* and

Dewey cases who also sign this brief, are equally desirous as are the counsel for Admiral Sampson and for the United States, of avoiding the circuitous method of reaching a final decision by this court through the Court of Appeals.

The learned Chief Justice of that court has construed the statutes governing appeals in prize cases in the light of the decisions of this court and has reached the conclusion, after learned and elaborate argument, that the appeal from the decree of the Supreme Court of the District of Columbia is directly to this court and not through the Court of Appeals. All parties interested in both the Sampson and the Dewey cases unite in desiring to uphold this decision.

Jurisdiction, it is true, can not be conferred by consent, but rests upon statute. Still it may not be improper to point out that the acts providing for distribution in prize have been repealed (Act of March 3, 1899, § 13, 30 Stat. L. 1007), and that consequently further actions like these can not occur.

A decision of this court sustaining the decision of the Court of Appeals will do substantial justice to all parties interested, will reach a final result more expeditiously than by going through the Court of Appeals, and will grant these libellants, who are asking on behalf of their officers and men as well as themselves the adjudication of a bounty given for special service to their country, a final decision at a far earlier date than could be secured by going through the Court of Appeals. They have once gone before that court and jurisdiction has been denied; it would be a substantial hardship to have jurisdiction again denied in this court and to be obliged for a third time to knock at the door of an appellate tribunal, even if sure then of admission.

29919

The construction of the statutes is so elaborately and carefully stated by the learned Chief Justice of the Court of Appeals, that counsel have no confidence in being able to add to that presentation.

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Supreme Court of the United States

OCTOBER TERM, 1902

No. 274

THE UNITED STATES, Appellant,

vs.

WILLIAM T. SAMPSON, Rear Admiral U. S. Navy, etc.,

Appeal from a Special Term of the Supreme Court of the District of Columbia.

BRIEF FOR THE APPELLEE.

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Printers for the Appellee.

JAMES H. HAYDEN,
Attorney.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 273.

THE UNITED STATES, Appellant,
vs.
WILLIAM T. SAMPSON, Rear-Admiral U. S. Navy, etc.

BRIEF FOR THE APPELLEE.

STATEMENT OF THE CASE.

This is an appeal from a decree of the Supreme Court of the District of Columbia, sitting as a prize court.

These are the facts:

On the morning of July 3, 1898, about 9.45 o'clock, the Spanish fleet, under the command of Admiral Cervera, consisting of the armored cruisers "*Infanta Maria Teresa*," "*Viscaya*," "*Almirante Oquendo*," and "*Cristobal Colon*" and two torpedo boats, which had been lying in the harbor of Santiago, made a sortie and attempted to force its way past the American fleet, then blockading the port. The "*Teresa*" was the first Spaniard to pass out of the harbor. She was struck repeatedly by shells from the United States vessels, which caused the wood-work in her superstructure to take fire and put her out of action. She was beached about five miles to the westward of Santiago, and hauled down her flag in token of surrender, at 10.30 A. M. The survivors of her crew were taken off in boats to the United States vessels and made prisoners of war. (*Report: Sec-*

retary of the Navy, 1898, Vol. II, pp. 505–557.) On July 5th, Captain F. E. Chadwick, U. S. N., the libellant's chief of staff, and several other officers, visited the "*Teresa.*" They found her stranded on a beach of coral sand, bows on to shore, and about one hundred yards distant from it. She lay in an upright position, grounded for the greater part of her length, and submerged to her normal load-water line. She had suffered little damage from gun-fire. Her hull proper, her main engines and boilers, and the machinery below her protective deck were practically intact. Her structural strength was unimpaired. Her injuries were of a local character. Her superstructure had been damaged by the burning of her wood-work. She was completed in 1894 and, like all modern vessels, was built principally of steel. The amount of combustible material contained in her was so small that the fire was extinguished before it reached her magazines, coal bunkers, or machinery. Her larger guns were practically uninjured. Her smaller guns had sustained considerable damage from the fire and much of her equipment had been consumed. But from the first, she was never considered otherwise than as a salvable ship and a prize (*pp. 31–38; 44–48; 51*). On July 6th, it being impossible to determine the condition of the Spanish vessels from a casual observation, Admiral Sampson appointed a board to inspect them and report the result. The order contained this statement: (*Report: Secretary of the Navy, 1898, Vol. II, p. 573.*)

> "It is thought that the '*Maria Teresa*' is practically uninjured below the water line, and may be floated and repaired."

The board consisted of five officers of the line of the Navy, two of the engineer corps, and one naval constructor.

29922

On July 7th it commenced its work. The inspection made of each vessel was as thorough and complete as her position and condition permitted. On July 13th, the board made its report (*Id., pp. 574–592*). Each vessel was considered separately. In each case the findings and conclusions reported were adopted unanimously (*p. 117*). Appended to the report on the "*Teresa*" is a diagram which gives her longitudinal midship section as she lay on the beach. It was based upon information obtained from careful soundings. It shows that the ship was grounded for the greater part of her length, and had settled slightly in the sand. At her bows, the water was about 15 feet in depth and at her stern about 24 feet. At the stern her normal load water line was level with the surface of the sea. At the bow it protruded six feet or more above the water. In no sense was she sunk. The report describes the condition of the ship in general, and that of her parts and appurtenances in some detail. The conclusion of the board is given in these words (*Report: Secretary of the Navy, 1898, Vol. II, pp. 577–578.*);

> "The structural solidity of the ship ('*Teresa*') is not to any considerable degree injured. Barring local distortions, the hull is practically intact.
>
> "The outside skin is reported by divers as intact, so far as holes are concerned. The examination extended to the bilges, fore and aft, and in some parts near the extremities, to the bottom.
>
> "The lower portion of the vessel, up to the protective deck, is filled with water. The water comes in through the stern and other torpedo tubes.
>
> "The board is therefore of the opinion that it is possible and desirable to float the '*Infanta Maria Teresa.*' The vessel is lying about 100 yards from the beach, in a small cove, about five miles west of the Morro, and is grounded for the greater part of her length. The vessel lies in a very good position with deep water astern to facilitate pulling her off.

"She is fairly well protected against an easterly sea.

"The soundings in the immediate vicinity of the ship are indicated in the sketch appended and marked 'C.'

"The aftermast and also the funnels of the '*Infanta Maria Teresa*' are standing. The foremast has fallen aft and now lies along starboard gangway.

"It is recommended that the vessel be immediately secured by cables, so that she can not be moved from her present position."

The findings and conclusions with regard to the other vessels were very different. Neither the "*Oquendo*" nor the "*Viscaya*" had been sunk, but both were found to have sustained greater damage from gun fire. Their chief injuries, however, were the result of internal explosions which had destroyed the structural solidity of the hulls. As ships they were not salvable. In other words they had been destroyed. Some of their guns and equipment had sustained but slight injury and were salvable (*Id. pp. 583–589*). While the "*Colon*" had sustained no injuries of consequence from gun fire and none from conflagration, she was scuttled by her officers and crew after her surrender, and sank in water which varied from 35 to 90 feet in depth, where she lay on her beam ends. The board reported that the chance of saving her would be good, if prompt and efficient measures were taken, and if the weather continued favorable (*pp. 115–165*).

The American fleet did not possess appliances and materials adequate to float and repair large vessels which had been stranded. Pending the arrival of such things from the United States, the "*Teresa*" was secured in her position by cables. That was the only thing needed to preserve her from further injury (*pp. 177, 141, 151*).

On July 6th, three days after the engagement and the

day on which Admiral Sampson appointed the board to inspect the Spanish vessels, the Secretary of the Navy entered into a contract with the Merritt & Chapman Derrick and Wrecking Company, entitled: "Contract for raising Spanish war vessels now ashore on the southern coast of Cuba near Santiago" (*pp. 15–18*). By this contract the wrecking company was employed to save all of the vessels, or as many of them as possible, and deliver them to the United States at the Norfolk Navy Yard. The wrecking company agreed to provide a plant and a force of men adequate to prosecute the work to the best advantage. It was provided that:

> "An officer of the Navy, to be designated by the commander-in-chief, and at all times subject to his orders, under the direction of the Secretary, shall be present at the scene of the work as the Department's representative, to supervise and inspect the operations under this contract." . . .

The wrecking company equipped its steamer "*I. J. Merritt*" with pumps, derricks, and other machinery, and such materials as are employed in floating and repairing stranded vessels, and despatched her to Santiago with a force of machinists and wreckers. Work upon the Spanish vessels was begun about the middle of July. The U. S. Flagship "*New York*" and other vessels of Admiral Sampson's fleet remained in the vicinity of the "*Teresa*" until the 19th of July, and kept watch over her until the wrecking company and the representative of the Navy Department took charge of her. On the 12th of August the fleet left Cuban waters and came north under orders from the Secretary of the Navy (*pp. 39–40, 50, 60, 86, 133, 140, 145 and 15*). The wrecking company's force was assisted in its work by the U. S. Repairship "*Vulcan*" and her crew. An officer of the

Navy, acting as the representative of the Navy Department, was present at the scene of the work. At first, some of the smaller guns, anchors, chains, and tackle were taken off the "*Teresa*" and removed to a United States vessel where they remained in the custody of the Department's representative. (*Report: Secretary of the Navy, 1898, Vol. II, pp. 598–599.*) Next, her torpedo tubes and other apertures, which admitted the water to her hold, were closed, and an effort made to pump her dry. With difficulty, enough water was removed to give her some measure of buoyancy, but as soon as she rose from the bottom the water rushed in so rapidly that the pumps at hand could not keep her afloat. It was found that this inflow of water came through a hole in her bottom some three feet in diameter. When the vessel grounded a boulder of coral rock penetrated her outer skin, making the hole and cracking the plates in its immediate vicinity. Several attempts were made to float the ship, but all of them failed, owing to the improper methods employed. Toward the end of August it became apparent that the wrecking company's force and those assisting it were making no substantial progress. Commodore J. C. Watson, U. S. N., then in command of the naval force in the vicinity of Santiago, directed this despatch to the Secretary of the Navy: (*Id., p. 594*).

> "Wrecking company employing additional force clearing out all storerooms, lockers, forward compartments '*Maria Teresa*' to find leak, cutting through protective deck under chain locker to admit diver and suction pipe. *Admit previous mistakes.*" * * *

On the same day Commodore Watson received a report from Lieutenant George P. Blow, U. S. N., then commanding the naval contingent employed on the

"Teresa." From this it appears that the wrecking company was resorting to new methods for floating the ship (*Id., pp. 595–597*). On August 27th the Secretary of the Navy directed this despatch to Commodore Watson (*p. 18*):

> "You are placed in charge of the wrecking operations with full authority to take such action as you may deem for the best interests of the Government, including the concentration of all work on the '*Maria Teresa,*' or otherwise, and discharge of men; proceed to scene of operations with any vessel you may wish to inspect. *Department inclined to believe wrecking companies unnecessarily dilatory and require sharp supervision.* Acknowledge."

Under its contract the wrecking company was to receive $800.00 a day for the period consumed in floating and repairing the ship in addition to further compensation to be paid in the event of ultimate success (*p. 17*).

Shortly after the completion of his work on the board appointed to inspect the Spanish vessels, Naval Constructor R. P. Hobson had proceeded to the United States on duty. On August 29th, he returned to the "*Teresa*" (*p. 151*). Perceiving that the work of recovery was being done without definite plan and in an inefficient manner, he cabled to the Navy Department, asking that he be given entire charge of the wrecking operations. Commodore Watson was instructed by the Department to give Hobson such leeway as he deemed proper, and Hobson was directed to report to Watson for instructions. (*Report: Secretary of the Navy, 1898, Vol. II, p. 599.*) By Hobson's advice, a change was made in the plan of the work. Commencing at the stern of the "*Teresa,*" her compartments, one by one, were made water-tight and pumped dry. The boulder which had penetrated her bottom was removed. The small compartment, in which the hole, made by the

boulder, was located, was segregated from the rest of the ship (*pp. 151–152*). On Friday, the 16th of September, Commodore Watson sent a cable to the Secretary of the Navy, in which he said: (*Report: Secretary of the Navy, 1898, Vol. II., p. 600.*)

> "* * * Goodrich reports work on '*Teresa*,' shows encouraging progress under Hobson's new methods. Ten 6-inch guns removed and in '*Leonidas*.' Fair prospect floating '*Teresa*' Monday or Tuesday."

On September 23d the "*Teresa*" was successfully floated. She proceeded to Guantanamo flying the American flag, using her own steam and in tow of the "*Merritt*" and the U. S. S. "*Potomac*."

On the 25th of September, Captain C. F. Goodrich, U. S. N., then in command of the naval force present, sent a dispatch to the Secretary of the Navy, in which he said (*Id., Vol. II, p. 600*):

> "'*Infanta Maria Teresa*' safe Guantanamo last night; '*Potomac*' aided towing. '*Newark*,' '*Scorpion*,' '*Vulcan*,' and '*Alvarado*' aided otherwise and in convoying; no incident or accident; preparations voyage north begin to-day * * *."

Appended to the report of the Chief of the Bureau of Construction and Repair, dated September 24, 1898, there is a "*Table of Vessels of the United States Navy.*" This includes a list of vessels, "*Captured in Spanish-American War*," on which appears the name of the "*Infanta Maria Teresa.*" She is described as a "steel armored cruiser," "being repaired" (*Id., Vol. I, pp. 511, 570–571*).

Lying at anchor, in the bay, off Guantanamo, the "*Teresa*" remained until the end of October, undergoing

29925

repairs, which were made by the wrecking company with the assistance of the "*Vulcan's*" force. The work progressed slowly. Finally, Lieut.-Commander Ira Harris, of the "*Vulcan*," reported that the "*Teresa*" was ready for sea and in condition to make the voyage to Norfolk with a reasonable degree of safety. Captain C. M. Chester, U. S. N., then in command of the naval force present, ordered Harris to sail on the "*Teresa*" with a naval force composed of men who had volunteered for the voyage (*p. 23*). On October 29th, the "*Teresa*" left Guantanamo under her own steam, in tow of the "*Vulcan*" and "*Merritt*," and convoyed by the U. S. S. "*Leonidas*." On the night of the 30th, they passed the island of San Salvador (Watling's Island). Everything went well until the morning of November 1st, when a northeasterly storm set in. The "*Teresa*" had then covered about five hundred miles, or over a third of the distance to Norfolk. The seas came head on. All four of the vessels pitched heavily. Considerable water broke over the "*Teresa's*" bows and leaked through the temporary deck of wood, which had been put upon her at Guantanamo. No considerable amount of this water penetrated the protective deck and reached the ship's hold. The rivet holes in the plates of her superstructure, which had been elongated by the heat of the conflagration and had not been properly caulked before she sailed from Guantanamo, admitted considerable water. About five o'clock in the afternoon, the officers of the "*Teresa*" fearing that she would not weather the gale and was likely to founder, abandoned ship, making their way in small boats to the "*Merritt*" (*pp. 8–9*). The "*Teresa*" did not founder, but rode out the storm with no one at her helm; no oil bags in use to break the seas; and no one at her pumps. Rolling in the trough of the seas she floated for two days, without settling appreciably below her normal load-water

line, and finally stranded upon Cat Island, distant upwards of fifty miles to the southwestward of the place where she was abandoned. She remained a salvable ship until she took the ground on Cat Island. There she was dashed against the rocks, and sustained injuries, which resulted in her total loss (*pp. 153–154*).

It is admitted that the Navy Department took exclusive charge of the floating and repair of the "*Teresa*" and that the captors had no part or voice in these things or in her navigation after leaving Guantanamo or her abandonment at sea (*pp. xiv*).

Having been appropriated by the Secretary of the Navy for the use of the United States on July 6th, the "*Teresa*" and other captured property could not be sent in for adjudication, nor could they be surveyed and appraised and sold by the commanding officer present in the manner prescribed by statute* (*p. xiv*).

**R. S. U. S., Sec. 4615.* "The commanding officer of any vessel making a capture shall secure the documents of the ship and cargo, including the log-book, with all other documents, letters and other papers found on board, and make an inventory of the same and seal them up and send them, with the inventory, to the court in which proceedings are to be had, with a written statement that they are all the papers found and are in the condition in which they were found; or explaining the absence of any documents or papers, or any change in their condition. He shall also send to such court as witnesses, the master, one or more of the other officers, the supercargo, purser or agent of the prize, and any person found on board whom he may suppose to be interested in, or to have knowledge respecting the title, national character, or destination of the prize. He shall send the prize, with the documents, papers, and witnesses, under charge of a competent prize master and prize crew, into port for adjudication, explaining the absence of any usual witnesses; and in the absence of instructions from superior authority as to the port to which it shall be sent, he shall select such port as he shall deem most convenient, in view of the interests of probable claimants, as well as of the captors. *If the captured vessel or any part of the captured property is not in a condition to be sent in for adjudication, a survey shall be had thereon and an appraisement made by persons as competent and impartial as can be obtained, and their report shall be sent to the court in which proceedings are to be had; and such property, unless appropriated for the use of the Government, shall be sold by the authority of the commanding officer present, and the proceeds deposited with the assistant treasurer of the United States most accessible to such court, and subject to its order in the cause.*"

By his order of July 13, 1899, the Secretary of the Navy caused the "*Teresa*" and other captured property to be surveyed, inventoried and appraised by a board of naval officers (*p. xi, 1–3*). He did not, however, deposit the value of the prize property, or any sum whatever, subject to the order of any prize court, nor did he designate a district where proceedings should be had for the adjudication of the prize although the law made it his duty to do so.*

In due course, suit was brought by the captors. These proceedings were had in the manner prescribed by statute.†

The libel was filed by Admiral Sampson, who acted in his own behalf and in behalf of all officers and men of the Navy, who, serving under his command, participated in

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**R. S. U. S., Sec. 4624.* "Whenever any captured vessel, arms, munitions, or other material are taken for the use of the United States before it comes into the custody of the prize court, it shall be surveyed, appraised and inventoried, by persons as competent and impartial as can be obtained, and the survey, appraisement and inventory shall be sent to the court in which proceedings are to be had; and if taken afterwards, sufficient notice shall first be given to enable the court to have the property appraised for the protection of the rights of the claimants and captors. *In all cases of prize property taken for or appropriated to the use of the Government, the Department for whose use it is taken or appropriated, shall deposit the value thereof with the assistant treasurer of the United States nearest to the place of the session of the court, subject to the order of the court in the cause.*"

† *R. S. U. S., Sec. 4625.* "*If by reason of the condition of the captured property, or if because the whole has been appropriated to the use of the United States, no part of it has been or can be sent in for adjudication, or if the property has been entirely lost or destroyed, proceedings for adjudication may be commenced in any district the Secretary of the Navy may designate; and in any such case the proceeds of anything sold, or the value of anything taken or appropriated for the use of the United States, shall be deposited with the assistant treasurer in or nearest to that district subject to the order of the court in the cause. If, when no property can be sent in for adjudication, the Secretary of the Navy shall not, within three months after any capture, designate a district for the institution of proceedings, the captors may institute proceedings for the adjudication in any district. * * * The monition issued in either case shall be served on the attorney of the United States for the district and on the Secretary of the Navy, as well as on such other persons as the court shall order to be notified.*"

the captures. In this respect the practice adopted in earlier cases was followed (*Farragut vs. U. S., 22 Wall., 406*). After a recital of the facts, including the circumstances under which the prize property was captured and subsequently appropriated for the use of the United States, the libellant prayed: (1) that the "*Teresa*" and other property be condemned as prize; (2) that the Secretary of the Navy be ordered to deposit the value of the prize in the manner prescribed by law and (3) that the sum so deposited be distributed among the captors in accordance with law (*pp. i–iv*).

The United States and the Secretary of the Navy appeared and filed answers, or claims to the prize. They averred that neither the "*Teresa*" nor the other property in question was captured under circumstances which rendered them condemnable as prize. All material facts, set up in the libel, were admitted. (*pp. xiii–xvi.*)

Proofs were taken on behalf of both parties. These consisted of official reports and correspondence, on file in the Navy Department; the depositions of seven witnesses, produced by the libellants, and of three produced by the claimants (*pp. 1–176, Report of the Secretary of the Navy, 1898, Vols. I and II*).

The case came on for hearing upon the issue of "prize or no prize," and was submitted after oral argument, the record containing all pleadings, interlocutory proceedings, the proofs and briefs for both parties. By its decree the court below condemned as lawful prize of war, the "*Teresa*" and the guns, munitions and other property taken from her and other vessels of the Spanish fleet (*p. 177*), whereupon, the United States took this appeal (*p. 178*).

ARGUMENT.

The United States contends that the "*Teresa*" and other property described in the libel were not captured and were not condemnable as prize. This is based upon the following propositions:—

Inasmuch as the "*Teresa*" was a public armed enemy vessel, and when taken had sustained injuries which prevented her being immediately sent in for adjudication, she did not come within the provisions of law applicable to captures made as prize; and inasmuch as the United States did not actually float the vessel off the beach where she lay stranded and complete the temporary repairs made upon her until after the signing of the protocol of August 12, 1898, which terminated the active hostilities between the United States and Spain, she was not captured *jure belli*.

Inasmuch as the guns, naval stores, and other property condemned were taken from the "*Viscaya*," "*Almirante Oquendo*," "*Cristobal Colon*," "*Pluton*," and "*Furor*" (*pp. 99–110*), which were destroyed in the engagement, they were not captured in the sense in which that term is used in the prize act.

There is no foundation for these contentions, either in law or in fact.

THE "TERESA," WAS CAPTURED JURE BELLI ON JULY 3, 1898, AND WAS A PRIZE IN THE POSSESSION OF THE CAPTORS, WHEN APPROPRIATED FOR THE USE OF THE UNITED STATES. HENCE SHE WAS CONDEMNABLE AS PRIZE.

The word "capture" as applied to naval warfare and as used in the law of prize has been defined thus:

> *Bouvier, L. D., Vol. I, p. 284*: "Capture: The taking of property by one belligerent from another.

"To make a good capture of a ship, it must be subdued and taken by an enemy in open war, or by way of reprisals or by a pirate, and with intent to deprive the owner of it.

"Capture may be made with intent to possess both ship and cargo, or only to seize the goods of the enemy, or contraband goods, which are on board. The former is the capture of the ship in the proper sense of the word. * * *

"Capture is deemed lawful when made by a declared enemy lawfully commissioned and according to the laws of war, and unlawful when it is against the rules established by the law of nations.

"All captures, *jure belli*, are made for the Government."

Standard Dictionary, Vol. I., p. 282: "In marine insurance, *capture* includes every species of taking by force from without to which a vessel may be exposed during a voyage."

It cannot be denied that the "*Teresa*" was subdued in open war, being taken from a declared enemy.

The question as to what constitutes a capture within the meaning of our prize acts was passed upon by this court in the case of the "*Grotius*" (*8 Cranch, 456 and 9 Cranch, 368*). There the principal issue was, whether the vessel, libeled as prize, had been captured or not. It appeared that the "*Grotius*," an American vessel, while on a voyage which was unlawful, by reason of the existence of war between this country and Great Britain, was detained by the American privateer "*Frolic*." The master of the "*Grotius*" was ordered to go on board the "*Frolic*," where his papers were examined. The master of the "*Frolic*" sent one of his men on board the "*Grotius*" and told her master to proceed to Boston. The master retained all of the ship's papers and the command of his vessel and was allowed to navigate her into port.

The "*Frolic*" did not accompany her. On her arrival the "*Grotius*" was libelled as prize. Her officers and men testified that the man put on board by the "*Frolic*" came as a passenger, and conducted himself as such, that the filing of the libel was the first intimation given them that the "*Frolic*" intended to claim that she had captured the "*Grotius*." The master of the privateer testified that he put his man on the "*Grotius*" as prize-master, with instructions to libel the ship when she reached Boston. The man gave similar testimony. The claimants of the "*Grotius*" contended that the detention of their ship and the placing of one man on board, without positive notification to her master, that the "*Grotius*" was a prize and the man, the prize-master, did not constitute a capture. Washington, J., delivering the opinion of the court, said (*9 Cranch, 372*):

> "Upon the whole it is the opinion of the majority of the court that the validity of the capture of the '*Grotius*' as a prize of war is sufficiently established by the evidence, and the captain having acquiesced in the subsequent arrangement as to the mode of sending in the vessel, she ought to have been condemned to the use of the captors."

It cannot be denied that the "*Teresa*" was more effectually subdued than was the "*Grotius*," and that after surrender she was more securely within the possession of her captors. When the "*Teresa*" turned to run in shore she abandoned the fight. There was no way in which she could escape from the American force. Her officers and men had no hope of saving her from capture. Her flag was hauled down in token of surrender. All, or nearly all, of the survivors of her crew were made prisoners of war. It is true no prize crew was put on board of her, but inasmuch as she could not escape, it

would have been a useless piece of mummery to go through the form of appointing a prize-master and sending a prize crew from the United States ships. At the time of the "*Teresa's*" surrender, the three remaining Spanish cruisers were continuing the battle and making a desperate endeavor to escape. These had to be subdued. Furthermore, the libellant had to maintain the blockade of Santiago, and as soon as one of his vessels could be spared from the engagement, she was ordered to resume her station off the port. It would have been gross neglect of duty if the libellant or the commanding officer of any one of the United States ships had abandoned the engagement or the blockade in order to make an unnecessary show of securing the captors' rights in a prize, already securely theirs.

In short, the act of making a capture is a fact, and with reference to the "*Teresa*" that fact has been proved. Still counsel for the United States insist that in the case of a vessel-of-war, taken from an enemy, exceptional circumstances must appear to render the capture *de facto*, a capture *de jure*, namely: that the vessel must when taken be capable of being sent in for adjudication, forthwith, and without awaiting more extensive repairs than the captors are able to make with the materials at hand. A careful examination of the statutes and decisions does not disclose any clause or dictum, which by any possible interpretation could be taken to mean that, for purposes of prize, an enemy warship stands upon a different footing from an enemy merchantman. All provisions of the prize act apply equally and in like manner to captured enemy property of every kind, whether it be public or private; whether the vessels are taken afloat or after being run ashore; and whether the property or vessels, when captured, can be sent in for adjudication or not.

It is provided:

> (*R. S. U. S.*, § *4615*) "* * * If the captured vessel or any part of the captured property is not in condition to be sent in for adjudication, a survey shall be had thereon and an appraisement made by persons as competent and impartial as can be obtained, and their reports shall be sent to the court in which proceedings are to be had; and such property, unless appropriated for the use of the Government, shall be sold by the authority of the commanding officer present, and the proceeds deposited with the Assistant Treasurer of the United States * * *."

Again:

> (*R. S. U. S.*, § *4625*) "If by reason of the condition of the captured property, or if because the whole of it has been appropriated to the use of the United States, no part of it has been or can be sent in for adjudication; or if the property has been entirely lost or destroyed, proceedings for adjudication may be commenced * * *."

During the civil war the Confederate war vessel "*Atlanta*" was subdued by the U. S. S. "*Weehawken*" and "*Nahant*" in an engagement fought in Wassau Sound. The "*Atlanta*" sustained great damage in the engagement, but was adjudicated like any other captured vessel and condemned as a prize. (*The "Atlanta," 3 Wall., 425.*)

Another case, of historic interest, and directly in point is that of the Confederate iron-clad "*Albemarle.*" (*Supreme Court of the District of Columbia—No. 146, District court.*) It appeared that the "*Albemarle*" was "captured and sunk" in the Roanoke River, on the night of October 27, 1864, by a picket launch under the command

of Lieutenant Cushing. The "*Albemarle*" was lying in the river some distance above its mouth and close under the guns of the Confederate shore batteries. Armed with a torpedo, the launch approached noiselessly, but just as the attack was made she was discovered, fired upon and destroyed. While sinking, however, she succeeded in discharging her torpedo under the "*Albemarle,*" which tore a great hole in her side below the water-line and caused her to sink to the bottom. Several of the launch's crew were killed in the attack; but Cushing and the few survivors swam across the river and made good their escape. The "*Albemarle*" was afterwards raised by the United States and appropriated by the Secretary of the Navy for the use of the Government. She was appraised. The Secretary of the Navy deposited an amount equal to her value in the manner prescribed by law (*R. S. U. S., Sec. 4624*). Libel was filed, in the name of the United States, and proceedings were had in the manner provided by statute (*R. S. U. S., Sec. 4625*). Although the "*Albemarle*" was actually sunk and Cushing did not attempt to take or retain possession of her, she was condemned as prize. This precedent shows most clearly that even if an enemy war vessel has been sunk, which the "*Teresa*" was not, if she be recovered and appropriated by the Government and be found to be worth any sum over and above the cost of her recovery, she is to be treated as a prize.

While it is true that the "*Teresa*" sustained certain local injuries in the engagement from gun-fire, conflagration, and grounding on the beach, it is also true that at the time of her surrender and at all times thereafter, until her abandonment at sea, she possessed great value. This is proven beyond question by the appraisement made by the board of survey (*pp. 1–3*). It is true, likewise, that she was throughout that period a salvable ship.

Counsel for the appellant rely upon the opinion of this court in the case of "*Siren*" (*13 Wallace, 389, 396*), as support of their arguments to the effect that the "*Teresa*" was not captured under circumstances which would justify her condemnation as prize and that the conduct of the captors, subsequent to the engagement, was not such as to entitle them to prize. The facts in the case of the "*Siren*" were utterly different from those which we have before us, and nothing contained in the opinion has any applicability to the case at bar. It appeared that during the civil war the port of Charleston was beleaguered by military and naval forces of the United States, which for some time were held at bay by the Confederate forces, but, at length, the latter evacuated their fortifications and abandoned the city under cover of night. This became known to both United States forces on the following morning, and both immediately approached to take possession of the place. The U. S. S. "*Gladiolus*", which was one of the first of the blockading vessels to enter the harbor, was informed that a steamer had run the blockade on the preceding night and forthwith sent boats in search of her. She was found in a small river or creek, where her crew had opened her sea valves and set her on fire with the intention of sinking or otherwise destroying her. The men from the "*Gladiolus*" extinguished the flames and the "*Gladiolus*" towed her into shallow water. Later she was sent to Boston for adjudication, proceedings in prize were instituted in the district court, and she was condemned. The officers and men of the "*Gladiolus*" and other vessels of the United States fleet made claim for prize money, but it was held that the "*Siren*" was a joint capture by the army and navy, and hence the naval captors were not entitled to participate in the prize. The

decision of the district court was affirmed on appeal by this court. The opinion opens with a statement of the origin of the law of prize in England and in the United States, and makes the general proposition, which no one has ever denied, that all captures made *jure belli* are for the Government; also, that

> "All captures made without their (the government's) express authority inure *ipso facto* to their benefit. Whenever a claim is set up, its sanction by an Act of Congress must be shown. If no such Act can be produced the alleged right does not exist. The United States takes captured property, not as droits, but strictly and solely *jure reipublicae*."

In the present case there can be no possible excuse for the suggestion that the "*Teresa*" was a joint capture of the military and naval forces of the United States. It appears that she was subdued on high seas in a naval engagement, wherein the land forces of the United States took no part. The capture, being that of a public armed enemy vessel, made by vessels of the United States Navy, was most assuredly one made by authority of the United States. We concede that the capture, like all others, was made for the government and that the captors have no rights in the prize other than those given them by Act of Congress, but we do insist that on the facts presented and conceded, statutes of the United States, already quoted, entitle the captors to demand condemnation of the prize and a moite of her value. (*R. S. U. S.*, §§ *4615*, *4624*, *4625*, *4630*.)

It is contended on behalf of the United States that the capture of the "*Teresa*" could not be regarded as a completed transaction until September 23, 1898, when she was floated off the beach by the wrecking company and taken to Guantanamo; also that the capture could not be considered as one made *jure belli*, because active hostilities be-

tween the United States and Spain had ceased upon the signing of the protocol of August 12, 1898; also because Spain by that protocol had promised at a future date to relinquish its sovereignty over Cuba.

We contend that the capture became a completed transaction on July 3, 1898, and did not depend upon the floating of the vessel. Also that the war between the United States and Spain continued until December 10, 1898, when the Treaty of Paris was signed, and until then Cuba continued to be Spanish territory and hostile (*Dooley vs. U. S., 182 U. S., 222, 225*). Counsel for the United States disregard the fact that the United States treated the "*Teresa*" as captured property from the first, and from July 6th treated her as property which it had appropriated and owned and could dispose of as it pleased. It was never suggested that by lying stranded on the beach near shore she became Spanish property or Cuban property and such was not the case in fact or in law. In his work entitled "*Notes on the Principles and Practice in Prize*," it was said by Mr. Justice Story (*p. 29*):

> "And though when the jurisdiction has once attached it may be lost by a hostile recapture, escape, or voluntary discharge, yet it remains, *notwithstanding the goods are landed, for it does not depend upon their local situation* AFTER CAPTURE; *but the court will follow the goods or their proceeds* with its process wherever they may be found or under whatever title acquired. * * * So if a prize be lost at sea, the court may, nevertheless, proceed to adjudication either at the instance of the captors or of the claimants. (*The Peacock, 1 Rob. 271, 284.*) *So, although the property may be actually lying within a foreign neutral territory, the court may proceed to adjudication;* so, although the property has been sold by the captors or has passed into other hands. (*The Falcon, 6 Rob. 194; The Pomona, 1 Dodson, 25.*)"

The captors did not lose their rights in the prize by voluntary abandonment. From the close of the engagement until the wrecking force, employed by the Department, took charge of her, the "*Teresa*" remained, securely, in the possession of the captors. As soon as possible, her condition was ascertained and everything, necessary, was done to preserve her from damage or molestation. More than this the captors could not do, for immediately after news of the victory was received and before the captors were fully advised of the condition of the stranded vessels, and knew whether they could be sent in for adjudication or not; the Secretary of the Navy intervened and by his contract with the wrecking company appropriated them for the use of the United States. After this the captors could not sell the prize property, or even survey and appraise it. It remained for the Secretary of the Navy to do justice to the United States and the captors. It is immaterial that he did nothing for over a year. It was not incumbent upon the captors, nor would it have been proper for them to show him what was his duty and demand that he do it.

In the respondent's answer (*p. xiv*), mention is made of the fact that the floating and repairing the "*Teresa*" and preparations for bringing her to this country were conducted in the name of the United States, and at its cost. This did not extinguish the rights of the captors. (*U. S.* v. *The "Albemarle," supra.*) In appropriating the prize and arranging for her recovery the Secretary of the Navy acted voluntarily, within the scope of his authority and without the knowledge of the captors. They could not do otherwise than yield to his superior authority and the paramount right of the Government.

In the answers of the claimants (*pp. xiii, xv*), and by the brief now submitted on behalf of the United States,

it is asserted that the "*Teresa*" was "sunk or otherwise destroyed" and that the libellant and his officers and men are entitled to receive bounty, on that account, but are not entitled to prize money.

The statute which regulated the allowance of bounty for the destruction of public armed enemy vessels should not be confused with the statutes relating to captures made as prizes. It reads:

> "(*R. S. U. S.*, § *4635.*) A bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement, which is sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States, or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of inferior force, and of two hundred dollars if of equal or superior force, to be divided among the officers and crew in the same manner as prize money * * * * *."

The evident intent of this was that it should not apply, except in cases where the vessel subdued became a total loss, by reason of injuries sustained in the engagement, so that there remained no property to be adjudicated or appropriated for the use of the Government. Bounty was allowed, primarily as a reward for injury done the enemy, secondarily, as a reward for bravery. No bounty is allowed for the destruction of enemy merchantmen, for the loss of such would not inflict the same degree of injury upon the enemy or involve the same display of bravery on the part of the victors. The section does not apply to facts such as those presented by this record. We have seen that the "*Teresa*" was not "sunk" in the engagement, or thereafter. When last seen on the reef at

Cat Island she had not sunk. She was damaged in the engagement but not destroyed. The appraisement made by order of the Secretary of the Navy, the libellant's evidence, and even the respondent's evidence, all show that as she lay stranded on the beach after the battle she possessed great value. After being appropriated for the use of the United States she was floated, taken into port, and repaired. She put to sea, using her own steam. She covered five hundred miles of her voyage to the United States and finally rode out a severe storm under most difficult conditions. Her destruction occurred because she was abandoned at sea by representatives of the Navy Department, and there was no one on board to cast anchor and prevent her from drifting ashore.

The claimants below offered in evidence extracts from certain reports entitled "prize lists," sent to the Secretary of the Navy by the commanding officers of the United States vessels, which took part in the engagement (*pp. 166–171*). These are collected under a general heading entitled "Applications for Bounty Money". The heading forms no proper part of the record, having been interpolated by counsel for the United States. The lists contain expressions, such as these:

> "* * * the sortie and destruction of the Spanish fleet, the '*Infanta Maria Teresa*,' '*Viscaya*,' etc. * * *"
>
> "* * * the destruction of the following Spanish vessels: '*Infanta Maria Teresa*,' '*Viscaya*,' etc. * * *"
>
> "* * * the destruction of the Spanish squadron composed of the '*Infanta Maria Teresa*,' '*Oquendo*,' etc. * * *"

It is argued on behalf of the United States that the use

of the word "destruction" as applied to the Spanish fleet is proof that the "*Teresa*" was destroyed within the meaning of §4635, R. S. U. S., that her captors admitted that she was destroyed, and are bound by that admission. This like other arguments of the appellant, totally disregards the facts. The vessel was not destroyed. The issue of prize or no prize is founded upon a condition and not upon a theory. If it were true that one or more of the captors had deliberately expressed the opinion that the "*Teresa*" was destroyed in the engagement, such an opinion could not prevail for an instant against the facts now before us. The intention or opinion of the parties participant is never material.

Had the "*Teresa*" been lost while in the custody of the captors, they would have had to bear their loss. Where a prize is lost through the negligence of her captors, they are answerable for it to their government or to any claimant who establishes a right to the vessel. (*Story—Notes on the Principles and Practices in Prize, p. 36.*) But such is not our case. The "*Teresa*" was appropriated by the United States and taken from the custody of her captors while a prize of great value. When lost she was completely within the possession and control of the Navy Department's representatives. She was listed, officially as a vessel of the Navy. Her loss must fall upon the United States, like that of any other public vessel. (*Walker vs United States, 34 C. Cls., 342, 347.*) Upon her appropriation by the Navy Department, the right of her captors was converted from a right to share in the proceeds arising from the sale of the ship (*R. S. U. S., 4630*) to a right to share in a fund to be created by a deposit of money, made by the Secretary of the Navy (*R. S. U. S., 4624*).

THE ARMS, MUNITIONS AND OTHER PROPERTY TAKEN FROM SPANISH VESSELS WHICH WERE DESTROYED IN THE ENGAGEMENT, AND APPROPRIATED FOR THE USE OF THE UNITED STATES WERE CAPTURED WITHIN THE MEANING OF THE PRIZE ACT (TITLE LIV, R. S. U. S.) AND WERE CONDEMNABLE AS PRIZE.

The Spanish cruisers "*Viscaya*", "*Almirante Oquendo*" and "*Cristobal Colon*" and the torpedo boats "*Pluton*" and "*Furor*" were undoubtedly destroyed in the engagement by sinking, or by gun-fire and burning. This is shown by the official report. (*Report, Secretary of the Navy, 1898, vol. II., pp. 573–592.*) The libellant and the officers and men who participated in their destruction sued for and recovered by bounty on that account. (*Sampson vs. United States, 35 C. Cls., 578.*) It is contended on behalf of the United States that this recovery precludes the condemnation as prize of the equipment and stores taken from those vessels and subsequently appropriated by the government. The authorities offered by counsel for the United States in support of their proposition are dicta, contained in two decisions. (*Porter vs. U. S., 106 U. S., 607; The "Selma," 1 Tow., 30.*) In these bounty is spoken of as an allowance "in lieu" of prize and as "a substitute for prize itself." Taken by themselves these general expressions tend to support the appellant's argument; but when considered along with the statute (*R. S. U. S., §4635, supra*) it will be seen that they were used in a limited sense and have no bearing upon the present case. It is, undoubtedly, true that when an enemy war-ship has been destroyed in action, or thereafter by reason of injuries sustained in action, and there is nothing left to adjudicate or appropriate, bounty is the only allowance which the victors can receive, but a vessel and her equipment are not

one and inseparable; the vessel may be destroyed and her equipment saved and captured; or the vessel may be saved and captured and her equipment destroyed. If the vessel be destroyed the victors are entitled to bounty for her destruction as a reward for the injury inflicted upon the enemy and for their bravery; but if, beside the destruction of the ship, they succeed in taking valuable property, whether cargo or equipment, there is nothing to prevent them from asking that it be condemned. Section 4635, R. S. U. S., was not intended to operate as a repeal or qualification of any other provision of the prize act. In his opinion delivered in the case of Dewey *vs.* The "*Don Juan de Austria*," etc. (*See Record in Nos. 654–655, October Term, 1901, pp. 157–158*), it was said by the learned justice of the court below:

> "Bounty is given, in lieu of prize, only in the case "of a ship or vessel of war belonging to an enemy "which is sunk or otherwise destroyed or which it "may be necessary to destroy in consequence of "injuries received in action. It is proportioned not "to the value of the ship or of its armament or muni- "tions, but to the number of persons on board of her "at the commencement of an engagement. While "it may be true that the original idea was that the "amount so ascertained would be a fair substitute for "the prize itself and such idea may not have been "far wrong in the days of wooden vessels of war, yet "in these days of steel armored cruisers and battle- "ships, with all of their expressive appliances, the "highest amount of bounty allowed is very incon- "siderable, compared with the value of the ship "sunk or destroyed. It is not an equivalent of the "prize. There is, therefore, no reason, arising out "of the amount paid as bounty that would justify "the claim that in fairness, such reward should be "exclusive. The reward is apparently bestowed for "the injury done to the enemy in the hope of fight-

" ing power; it matters not how valuable may be
" the appliances that go down with her or that are
" involved in her destruction. If the vessel were
" captured, the cargo or outfit and appliances would
" enter into the estimate of the total value. I find
" nothing in the statutes to prohibit the condemna-
" tion in prize of her property captured or taken from
" ships, sunk or destroyed, in addition to bounty
" paid for the destruction of the ship, and am of the
" opinion that it should be allowed."

We submit that the decree of condemnation should be affirmed.

McCAMMON & HAYDEN,
Proctors for the Appellee.

JAMES H. HAYDEN,
Advocate.

29935

No. 2795.

29930

IN THE

Supreme Court of the United States.

October Term, 1902.

THE UNITED STATES, *Appellant*,
v.
WILLIAM T. SAMPSON,
Rear Admiral, United States Navy. } No. 273.

BRIEF OF COUNSEL FOR CERTAIN CAPTORS.

This is an appeal from the decree of the Supreme Court of the District of Columbia, sitting as a District Court of the United States (R. S. D. C. § 762), condemning as prize the Spanish vessel of war *Infanta Maria Teresa* and certain other property captured at the battle of Santiago, July 3, 1898. The action was brought by Rear-Admiral William T. Sampson on behalf of the officers and men of the fleet under his command.

Answers have been filed on behalf of the United States and of the Secretary of the Navy. There is no very substantial difference in regard to the facts, but the issues disclosed in the pleadings are as to the legal consequences of the facts established.

The consideration of this case will be greatly aided by an exact statement of the facts contended for on behalf of the captors. The statutes giving jurisdiction to the court will then be set forth. Then the issues will be stated and discussed.

The Facts.

[The references by pages to the record in this case are designated Rec.; those to the Appendix to the Report of the Bureau of Navigation for 1898, Vol. II of the Report of the Secretary of the Navy, are designated App.]

1. On July 3, 1898, a state of war existed between the United States and the King of Spain, and the libellant was in command of the United States naval force on the North Atlantic Station (Rec. xiii; App. 167, 506).

2. An engagement took place on that date between the naval force of the United States, under command of the libellant, and a Spanish fleet consisting of the *Cristobal Colon*, *Infanta Maria Teresa*, *Viscaya*, *Almirante Oquendo*, *Pluton* and *Furor*, resulting in the defeat of the Spanish forces (Rec. xiii, xiv; App. 506).

3. All the vessels named, excepting the *Infanta Maria Teresa*, were completely destroyed as the result of this engagement, by gun fire, by internal explosions, by being run ashore, or by sinking (Rec. xiii, xiv; App. 573 *et seq;* Findings of Court of Claims in Bounty Cases; *Sampson* v. *United States*, 35 C. Cls. 578).

4. The *Infanta Maria Teresa*, under the close pursuit and severe gun fire of the American fleet, was run ashore by her own officers and grounded in a small cove (App. 577) about five miles (App. 577, Rec. 3) from the entrance to the harbor of Santiago (App. 517, 526, 531, 538, 561; Rec. 32; see also plates following App. 572).

5. An examination was made of the *Maria Teresa* by libellant on the 5th of July, 1898, and the conclusion reached that she was practically uninjured below the water-line and might be floated and repaired (App. 573). A board of survey was appointed by libellant on the 6th of July, which examined the vessel on the morning of the 7th, continuing the examination on the 9th, and reported on the 13th (App. 573) that "It is possible and desirable to float the *Infanta Maria Teresa*" (App. 577).

6. The vessel rested easily, bearing upon the bottom, which was of firm coral sand, throughout the greater part of her length. She rested nearly upright at the water line, differing from the normal load water line only in being somewhat higher at the bow. (See report of board, App. 574; first, second and third plates following App. 572; Capt. Chadwick's testimony, Rec. 32, 35, q. 26; Lt. Comd'r Staunton, Rec. 45, qq. 11–13, p. 51, qq. 13, 14; Chief Engineer Sims, Rec. 61, qq. 26, 27; Lt.-Comd'r Harris, Rec. 86, 87; Commander Mason, Rec. 116, 117; Commander Rodgers, Rec. 128; Lieut. Capehart, Rec. 140.)

7. The structural stability of the vessel was not to any considerable degree injured (App. 577; Rec. 33, 37, 45, 46, 62, 89, 116). The hull was intact (App. 577, Rec. 84, 140, 150) except for a hole made by a rock on the shore protruding through the bottom of the vessel forward (Rec. 34, 46, 62, 70, 116, 129). The armor and protective deck were in good condition (Rec. 84, 90, 116, 129). The main boilers and engines were in good condition (App. 576, Rec. 33, 63, 85, 88, 129, 140, 150), but were subject to some corrosion by the presence of water which filled the vessel to within six inches of the tops of the cylinders (App. 576, Rec. 34, 56, 63, 150). The lighter portion of the vessel above the protective deck, but not the turrets, was substantially destroyed (App. 575, 576, Rec. 45, 56, 66, 70, 129, 141, 150).

8. No doubt was entertained by any of the naval authorities as to the salvability of the vessel. (See statement of Admiral Sampson, App. 573; report of board, App. 577; Capt. Chadwick's opinion, Rec. 33, qq. 13–15, 19, p. 36, qq. 37–39; Lt.-Comd'r Staunton's opinion and statement of general consensus, Rec. 45, q. 19, p. 46, qq. 24, 25; Chief Engineer Sims, Rec. 67; Commander Mason, Rec. 117; Commander Rodgers, Rec. 129; Constructor Hobson, Rec. 150.)

9. A contract was made on the 6th of July, 1898, by the Navy Department (see Rec. 15 for contract) for floating and repairing the Spanish vessels and their delivery to the Navy Yard at Norfolk and work was begun upon the *Maria Teresa* under this contract and under the supervision of a representative of the Navy Department designated by the Secretary of the Navy (App. 595, 598, Rec. 16, 18–26, 70, 83), early in July (Rec. 151) as she lay on the beach and continued until the 23d day of September, 1898, when the vessel was towed off and taken to Guantanamo Bay, using her own steam (App. 600; Rec. 4).

10. The operations above set forth were conducted at all times by contractors engaged by the Navy Department, who were supervised by the naval representative of the Department. (See Contract, Rec. 16; reports to the Department, Rec. 18–20, 24–26, 26–31, App. 594–601; orders from the Department, Rec. 18, App. 599; testimony of Lieut.-Commander Harris, Rec. 83, 92, 93; Constructor Hobson, Rec. 151; Captain Chester, Rec. 70, 76, 78, 80.)

The libellant exercised no control over these operations. His only relation to this work up to August 12, 1898, was that he was commander-in-chief of the United States Naval Forces on the North Atlantic Station, including the officers of the Navy and naval operations in these waters. He left the vicinity on August 12, 1898 (Rec. 40). After this date the libellant had no relation to this work (Rec. 18–31).

11. After reaching Guantanamo Bay, work was continued on her under the same authority until October 29, 1898, when she started for the Navy Yard, at Norfolk, in the United States, in charge of the contracting company engaged by the Navy Department, under the direction of the officers placed in charge of the operations by the Secretary of the Navy (Rec. 23–26, 93), under tow of the *Vulcan*, a vessel of the United States Navy, and the wreck-

ing tug *Merritt*, belonging to this contracting company (Rec. 6, 7, 25), using also her own steam (Rec. 6, 7), and in company with the *Leonidas*, a vessel of the United States Navy. While on the voyage to the United States a storm was encountered, and under the authority of Lieutenant-Commander Harris, commanding the vessels named, an officer of the United States Navy, the *Teresa* was abandoned at sea November 1, 1898 (Rec. 8, 10–14, 26–31), and, riding through the storm with her flotation uninjured, drifted fifty-five miles (Rec. 14) and was wrecked off Cat Island (App. 602) upon a reef running parallel to the ship. This penetrated the ship's bottom practically its entire length and left the ship floating practically at her normal load water line, supported on the reef, but nearly intact as a structure (Rec. 153).

12. The vessel, while still beached, was taken for, and appropriated to, the use of the United States and continued in the possession and control of the United States up to the time of her final loss (conclusion of fact from the foregoing).

13. Guns and other war material and cash were taken from the vessels named in the second paragraph hereof by the United States and appropriated to the use of the United States (Rec. ii, xiv, 177).

14. Actions have been instituted in the Court of Claims for bounty under § 4635 of the Revised Statutes on account of all the vessels named in the second paragraph hereof other than the *Infanta Maria Teresa*, and bounty has been allowed under that section for the destruction of said vessels (see decision of Court of Claims) and paid (H. R. Doc. 354, 56th Cong. 2d. Sess.; 31 Stat. L. 1052).

15. The appropriation to the use of the United States of the *Infanta Maria Teresa* and the other property referred to in paragraph fourteen prevented any part of it being sent in for adjudication to any district court of the United

States. The Secretary of the Navy did not, within three months after the capture, designate a district for the institution of proceedings (Rec. iii, xiv).

The Statutes.

The statutes affecting this case are all found in Chapter LIV of the Revised Statutes, the provisions of which are nearly all reenactments of the act of June 30, 1864 13 Stat. L. 306. The following sections are chiefly material:

§ 4613. "The provisions of this Title shall apply to all captures made as prize by authority of the United States, or adopted and ratified by the President of the United States."

§ 4624. "Whenever any captured vessel, arms, munitions, or other material are taken for the use of the United States before it comes into the custody of the prize court, it shall be surveyed, appraised, and inventoried, by persons as competent and impartial as can be obtained, and the survey, appraisement and inventory shall be sent to the court in which proceedings are to be had; and if taken afterward, sufficient notice shall first be given to enable the court to have the property appraised for the protection of the rights of the claimants and captors. In all cases of prize-property taken for or appropriated to the use of the Government, the Department for whose use it is taken or appropriated shall deposit the value thereof with the assistant treasurer of the United States nearest to the place of the session of the court, subject to the order of the court in the cause."

§ 4625. "If by reason of the condition of the captured property, or if because the whole has been appropriated to the use of the United States, no part of it has been or can be sent in for adjudication, or if the property has been entirely lost or destroyed, proceedings for adjudication may be commenced in any district the Secretary of the Navy may designate; and in any such case the proceeds of anything sold, or the value of anything taken or appropriated for the use of the United States,

shall be deposited with the assistant treasurer in or nearest to that district, subject to the order of the court in the cause. If, when no property can be sent in for adjudication, the Secretary of the Navy shall not, within three months after any capture, designate a district for the institution of proceedings, the captors may institute proceedings for adjudication in any district. And if in any case of capture no proceedings for adjudication are commenced within a reasonable time, any parties claiming the captured property may, in any district court as a court of prize, move for a monition to show cause why such proceedings shall not be commenced, or institute an original suit in such court for restitution, and the monition issued in either case shall be served on the attorney of the United States for the district, and on the Secretary of the Navy, as well as on such other persons as the court shall order to be notified."

§ 4630. "The net proceeds of all property condemned as prize, shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force, one-half shall be decreed to the United States and the other half to the captors, except that in case of privateers and letters of marque, the whole shall be decreed to the captors, unless it shall be otherwise provided in the commissions issued to such vessels."

§ 4634. "Whenever a decree of condemnation is rendered, the court shall consider the claims of all vessels to participate in the proceeds, and for that purpose shall, at as early a stage of the cause as possible, order testimony to be taken tending to show what part should be awarded to the captors, and what vessels are entitled to share; and such testimony may be sworn to before any judge or commissioner of the courts of the United States, consul or commercial agent of the United States, or notary public, or any officer of the Navy highest in rank reasonably accessible to the deponent. The court shall make a decree of distribution, determining what vessels are entitled to share in the prize, and whether the prize was of superior, equal, or inferior force to the vessel or vessels making the capture. The decree shall recite the amount

of the gross proceeds of the prize subject to the order of the court, and the amount deducted therefrom for costs and expenses, and the amount remaining for distribution, and whether the whole of such residue is to go to the captors, or one-half to the captors, and one-half to the United States."

§ 4635. "A bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement, which is sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of inferior force, and of two hundred dollars, if of equal or superior force, to be divided among the officers and crew in the same manner as prize-money; and when the actual number of men on board any such vessel can not be satisfactorily ascertained, it shall be estimated according to the complement allowed to vessels of its class in the navy of the United States; and there shall be paid as bounty to the captors of any vessel of war captured from an enemy, which they may be instructed to destroy, or which is immediately destroyed for the public interest, but not in consequence of injuries received in action, fifty dollars for every person who shall be on board at the time of such capture."

The Procedure.

The usual course in prize is that the prize property is taken into the custody of the court. The proceedings are then governed by §§ 4615 *et seq.* The property here claimed in prize was appropriated by the United States. The procedure in such cases is prescribed by §§ 4624 and 4625. So far as within his power that procedure has been followed by the libellant. The Secretary of the Navy failing to proceed in prize, the libellant as commander of the naval forces brought this action as provided by the sections named in the Supreme Court of the District of Columbia. The same course of procedure was

followed in the case of *David G. Farragut, Admiral, U.S. N.* v. *The Ship Metropolis*, reported in the Supreme Court as *United States* v. *Farragut*, 22 Wall. 406. So far as possible the precedents of practice in that case were followed in this.

The Issues.

The case below presented two issues involved in the proceedings leading to a decree of condemnation:

1. Is the *Maria Teresa* prize?
2. Is the property captured on sunken vessels prize?

The learned judge of the Supreme Court of the District of Columbia decided both questions in favor of the captors and entered a decree condemning both the *Maria Teresa* and the other property as prize, but reserving matters of distribution, this being in accordance with the usual practice in prize cases. His opinion concerning these questions was rendered in the *Dewey* case and is printed in the record of that case, no. 309, pp. 147–159.

The case comes to this court on an appeal by the United States from this final decree of condemnation.

Is the Maria Teresa Prize?

The facts relative to this question have been stated above with exactness. In general they are not disputed. It appears that the vessel was beached as the result of the pursuit and gun-fire of the vessels of the libellant's command; that she rested on the beach slightly above her ordinary water line in the bow and at about her ordinary water line astern and that as she rested there it was apparent that she could be floated. Under these circumstances she fell into the hands of libellant as commander of the fleet of the United States and was then appropriated by the United States.

Capture the First Essential.

"Prize is generally used as a technical term to express a legal capture," said the Federal Court of Appeals in *Miller* v. *The Ship Resolution* (2 Dallas, 4). The first section of Title LIV, of the Revised Statutes, § 4613, says: "The provisions of this Title shall apply to all captures made as prize." § 4615 refers to the "vessel making the capture" and to the "captured property." So throughout the Title in regard to prize the word "capture" appears everywhere in §§ 4616, 4617, 4620, 4624, 4625 and numerous other sections, as indicating the first essential of prize.

In order to sustain a libel in prize, it is first necessary to show a capture.

Was this Vessel Captured?

To a capture, these things are necessary:

(*a*) A subject of capture—here the enemy's vessel.
(*b*) A capturing force—here the libellant's fleet.
(*c*) The taking of the subject of capture from the possession of the enemy into the possession of the captors—here accomplished by driving the vessel upon the beach and under the control of the captors.

That the control was complete is shown by the fact that the vessel was repaired, floated and carried into a harbor controlled by the United States.

After the battle of Santiago was over, the *Maria Teresa* was no longer in the possession of the Spaniards; she was in the possession of the fleet of the United States. She had been taken from the Spaniards by the United States Navy; she was under the control of these captors. It is true that she was in such condition that some labor and skill was required to move her and make her a fighting

machine again, yet none the less the capture from the Spaniards and the possession of the United States were complete. Such capture, made under the laws of war, consitutes prize.

A theory has been constructed by the ingenuity of counsel that the *Maria Teresa* was not captured until she was hauled off the beach; that that did not occur until after the protocol and consequently that the capture was not made in war. This theory was not thought of at the hearing below and is an instance of the extremity to which counsel is forced by the adverse logic of the court below. The capture was made when the vessel itself came within the power and control of the United States. The availability of the captured property for use was advanced by hauling the vessel off the beach and floating her, but she was just as much captured and in the possession of the United States on the 5th of July as she was on the 23d of September.

A Completed Appropriation.

After the capture, under ordinary conditions, another event occurs—delivery of the captured property into the possession of a prize court for adjudication. This did not occur in this case, but an event occurred which is made by statute an equivalent.

It has already been seen that by §§ 4624 and 4625 of the Revised Statutes, captured property may be taken for the use of the United States, instead of being delivered to the prize court. The exact form of language in these sections varies where the fact is referred to. The language of § 4624 is, "taken for the use of the United States"; in § 4625, in one place, "appropriated to the use of the United States," and in another, "taken or appropriated for the use of the United States." This taking or appropriation is by the statute made in all respects the

equivalent of the delivery of the *res* to the prize court. The money value of the prize, by R. S. § 4625, heretofore quoted, which should be deposited by the United States, stands in place of the prize. An action similar to a libel against the vessel itself, may be instituted, under this section, to fix the rights of the captors.

In the court below, it was conceded that the appropriation by the United States was here completed. It is difficult to see how any other position could have been taken. The facts are exactly stated on this point in this brief (p. 4) and detailed references are given to the evidence showing this. The Navy Department took the *Teresa* under its control, appointed its representatives to supervise the operations on her, made a contract for floating her and assumed entire charge of directing her repair and later movements. She was lost while under the officers and contractors placed in charge of her by the Department. She was not towed off the beach until more than a month after the libellant, Admiral Sampson, had left the vicinity and she was lost over two months after he left. The appropriation by the United States was complete and long before her loss she was as much in the possession of the United States as if the Government had received her at the Norfolk Navy Yard. The United States, having had the possession of the prize property, captured by the libellant's command, can not deny the appropriation.

Whether the prize property be delivered to a prize court and sold, or be appropriated by the United States, the result of the naval operation is the receipt of a thing of value; in the one instance it is sold at public sale, in the other, it is sold to a paramount purchaser upon a fair valuation. The bodily possession of the vessel upon appropriation by the United States makes the rights of the captors complete and condemnation in prize must follow.

Illustration of the Right.

The soundness of this position is well illustrated by supposing the existence of somewhat different conditions. Had the *Maria Teresa* been a private Spanish vessel, beached in an effort to escape from capture after the violation of blockade, floated by the action of the Secretary of the Navy and taken to a prize court, it is at once clear that no question ever could have been raised as to the jurisdiction of the court. There would have been in the court a *res* for adjudication, arriving in court by reason of her Spanish character, her violation of international law, and her capture by the naval forces of the United States. Condemnation proceedings could have been instituted by the United States or by the captors under Revised Statutes, § 4625. A further provision of the same section, had neither the United States nor the captors moved, would have granted the right, known also to British prize law, to the owner of the vessel claiming neutrality or innocence otherwise, to move for a monition to show cause or to institute a suit for restitution. The presence of the vessel itself would have been an all sufficient answer to any contention that she had not been captured and the ability to sell the vessel and turn the proceeds over to the disposition of the court would have prevented any question as to the existence of the valuable *res* which is at the basis of the right of prize.

None of the conditions thus supposed differentiating such a case from this, is of the slightest legal materiality. In the case supposed the vessel was of a private ownership. A prize tribunal must have been open to settle title to the vessel and to permit a dispute by the vessel owner as to the right of prize; yet there is no difference in American prize law between a public war vessel of the enemy and a private commercial vessel, in regard to jurisdiction of the prize court. Cases arose in the civil war of

condemnation of the enemy's vessels of war such as *The Atlanta*, 3 Wall. 425. It is useless to point out that the absence of a possible claimant might under some conditions make such procedure unnecessary; that does not effect the jurisdiction of the prize court or any other right granted by statute.

The absence of the vessel is immaterial since the appropriation by the United States of any prize, public or private, is made by statute equivalent, as we have seen, to the delivery of the vessel itself.

Nor is the loss of the vessel after the appropriation and its consequent absence from the court a varying circumstance of any legal importance. It is immaterial whether the loss occurred a day or ten years after the appropriation. The appropriation fixed the responsibility of the United States to the captors; subsequent acts could not lessen their rights. When the Government appropriated the vessel, then the captors' right was perfected. After a sale and equally after an appropriation, it is immaterial to the captors what becomes of the vessel. Title passed to the United States upon appropriation, and the United States could use, lose or destroy the vessel without affecting the captors' right.

Captors take the risk of loss when the property is in their own possession, before delivery to judicial custody; when the United States appropriated it, the risk became that of the United States and the burden of the loss was thus transferred to those actually responsible for it.

Was the Teresa "Sunk or Otherwise Destroyed"?

The existence of a statute granting a reward where no capture results from a successful naval battle, but, instead, the destruction of the enemy's vessels, is urged as a reason for denying the right of prize in this case. It

seems to be conceded that the conditions in this case are such that either bounty or prize money is granted. The government's position is apparently that, since the grant of bounty is "a substitute for the prize itself" (*The Selma*, 21 Fed. Cas. 1046) or "in lieu of it" (*Porter* v. *United States*, 106 U. S. 611), where there is no prize, prize money is not due when bounty is granted and that bounty is here granted. We readily accept the necessarily correlative position that bounty is not due for destruction of a vessel where prize money is granted for its capture and shall show that the bounty statute fails to include such a case as this. When that is proved our learned opponent's logic results in the admission of a grant of prize money to the libellant.

§ 4635, already quoted, gives a bounty for each person on board a vessel of the enemy "which is sunk or otherwise destroyed" in an engagement. It can not be contended by the United States that this vessel was destroyed, because all authorities agreed after the battle that she was a salvable vessel and she was actually saved.

Nor can it be contended that she was sunk. Sinking implies going down. The facts here are that, so far as there was any difference between her normal position and her position after beaching, she was slightly raised at the bow. The vessel was beached and, in beaching, a hole was stove in the bottom. She rested on the beach at substantially her normal level. There was no sinking. The answer is complete and condemnation should follow.

But (even if it should be admitted for the sake of the argument that the *Maria Teresa* was sunk) the description of a vessel "sunk or otherwise destroyed" does not include a vessel sunk, not destroyed, but later saved. The form of expression classes sinking as one form of destruction; "otherwise" destroyed implies that the alter-

native "sunk" means in some wise destroyed. "Sunk or otherwise destroyed" is equivalent to "destroyed by sinking or otherwise."

Not only the terms of the statute demand this meaning but its reason requires it. A successful issue of a naval battle is either the capture or destruction of the enemy's vessels; capture is where a vessel comes into the hands of the captors; destruction is where the victory is equally complete, but no vessel accrues to the captors. In this case the vessel came into the hands of the captors and thence to the United States; it was not destroyed.

If a vessel is captured, the reward is measured by its value in the form of prize-money; if destroyed, by an arbitrary statutory rule. The prize-money is the primary reward derived from the vessel itself, if captured; the bounty, under § 4635, is a reward for an equal degree of gallantry where the result was equally fatal to the enemy, but where no vessel is acquired for condemnation. The two grants are exclusive of each other; they can not both be granted for the same vessel; between them they cover the entire results of the successful sea fight.

Bounty Not Granted Without Destruction.

The correctness of our contention appears by supposing that the American fleet had sailed away from the coast of Cuba after the battle, and that the Spaniards, again in possession of the *Teresa*, had floated and restored her and used her in the Spanish navy again to fight American ships. Could bounty be claimed on this vessel because "sunk or otherwise destroyed" when it was actually doing battle for the enemy? Such a claim would be justly resisted. Or if sunk again in later battles and again raised, could bounty be claimed for a second or even a third "destruction"?

Through the conduct of these captors in action, the

United States acquired this vessel; it held it as captured property and can not consistently do that and at the same time maintain that the actual captors did not take, but destroyed, the vessel.

The Ascertainment of the Fact.

The Government has introduced official reports of officers serving under the libellant, in which they include the *Maria Teresa* with all the other vessels of the Spanish navy "destroyed" on the same day. However admirable the ingenuity of the argument, this court in deciding the case will deal with facts and not with words. It will not shift the judicial responsibility of definition of the terms of this statute to naval officers. These had completely discharged their responsibilities when they destroyed the power of the enemy's fleet, whether by destroying or by capturing the vessels. Statutory definition is a judicial and not a naval duty.

The fallacy of much of the defendants' argument is in confounding the existence of the fact of capture with the ascertainment of that fact. The vessel was captured, not destroyed, on July 3, 1898; it was not ascertained whether she was captured or destroyed until it was found whether she could be saved as a vessel. The ascertainment of the fact was delayed; the delay in determining the fact made no change in the fact. That she was destroyed is positively disproved by the fact that she was hauled off and taken into port; that she was captured was proved by the same fact. The Government had the vessel in its possession as a vessel; it is folly in the face of this fact to say that she was destroyed.

Precedents.

Many judicial precedents can not be expected in a case of this sort, but one exact precedent is found in this court

in the case of the *United States* v. *The Ram Albemarle*, No. 146. The facts in this case are facts of history. The *Albemarle* was blown up at her wharf and sunk. She was raised, appropriated by the United States, appraised and condemned in prize in the Supreme Court of the District of Columbia. The case was not contested; the decree entered there was not appealed from. Subsequent litigation arose over the same subject and resulted in a report of the proceedings in the original condemnation in the case of *Swan* v. *United States*, 19 C. Cls. 51. The importance of this case is in the fact that the United States accepted the rule then which it now disputes.

The Court Below.

The learned and lamented judge of the Supreme Court of the District of Columbia, in his opinion upon a similar branch of the *Dewey* prize case (see the record in No. 309), thus rested his decision:

"In behalf of the United States it is urged that those vessels, so far as the act of the United States fleet affected them, were sunk in Manila Harbor May 1, 1898; that such was their status then, and that the subsequent act of the Navy Department in raising and repairing them did not affect or change that status. And it is insisted that the libellant is not entitled to have an adjudication in prize, but is only entitled to bounty under the provisions of § 4635, R. S."

(Here the section is inserted.)

"The special attorney for the United States has supported his contention most ably and ingeniously by brief and argument, in which he goes into the history of bounty legislation, and shows that the libellant officially reported these vessels as destroyed, and that for other vessels also reported destroyed, shown by the testimony to be susceptible of being raised, although not to such good advantage, the libellant has claimed and collected bounty. It is true that they were sunk and that efforts were made to destroy them by burning, but the burning

was only partial because the vessels were submerged, and the sinking was only temporary and not beyond recovery. That they were raised and repaired and are now in the service of the United States are facts that seem to prove that they were not destroyed, but captured. Cavite arsenal was captured immediately after the battle of Manila, and these vessels, whose principal injuries were not from gun fire but from flames, came into possession of the Navy. They were then easily susceptible of being raised, but the necessary pumps and other appliances were not at hand. Had they been raised and repaired without delay the case would have been plainly one of capture. Were they 'sunk' in the sense in which that word is used in the statute? The expression is 'sunk or otherwise destroyed,' and the sense appears to be 'destroyed' by sinking or otherwise, so as to be beyond recovery, valueless to the victor or to the conquered. The bounty appears to be a reward for the injury done the enemy, in lieu of the compensation that in case of capture might be derived from condemnation of the prize, and it was not intended to be paid for mere temporary disablement that could be readily remedied. Suppose that this historic naval battle had not resulted in more than the overwhelming of the Spanish fleet; that Cavite had remained in the possession of Spain, and that Spain had raised these vessels and restored them to her navy, could it be contended that they had been 'sunk or otherwise destroyed' by the fleet under Admiral Dewey, and that he, his officers and men were entitled to bounty? The construction of the statute to me seems to be without difficulty."

It is submitted that the *Infanta Maria Teresa* was captured by the naval force commanded by Admiral Sampson and was appropriated by the United States. Consequently a decree should be entered for her condemnation in prize and for the distribution of one-half her value to the captors.

Property Captured From Destroyed Vessels.

The second branch of this claim is for guns taken from the vessels in the Spanish fleet, including both the *Teresa* and those which were destroyed, and cash found on the vessels. Three different questions are presented:

(1) Are guns taken from the *Teresa* prize?
(2) Are guns taken from the destroyed vessels prize?
(3) Is the cash taken from the destroyed vessels prize?

The Guns.

The first presents no special difficulty. If the *Teresa* herself is prize, then the guns also are prize. If the *Teresa* is held not to be prize, but is declared to have been destroyed, her guns must follow the same rule as those on the other vessels, and the first question merges into the second.

In answer to the second question, the Government asserts that guns attached to the vessel form a part of her equipment, and the reward granted by law to the captors is determined by the fate of the vessel itself, even if they are saved. Consequently, it is said that if bounty is awarded for the destruction of the vessel, the guns which are recovered must go to the United States without distribution of prize money to the captors.

All rights to the distribution of prize money and bounty rest upon the statute; every claim must be founded upon the statute and every defense must be determined by the test whether the statute either omits or prohibits the grant claimed. The statute itself is the soundest guide; that relieves this question of embarrassment.

Capture Creates Prize.

The first section of Title LV, "Prize," R. S. § 4613, declares that the provisions of this title, which includes

the section governing distribution of prize money, shall apply to all captures made "by authority of the United States." All the remaining sections of this chapter, in referring to the captured property, recognize that this may be either a vessel or other property. Thus, in § 4615, the documents are to be secured both of the ship and cargo. In certain conditions, a survey shall be had "of the captured vessel or any part of the captured property." By § 4622, duties are imposed upon the prize commissioners "as soon as any prize property comes within the district." They are to make "their own inventory of the prize property," and they are to report "if the captured vessel or any of its cargo or stores may be useful to the United States." By § 4623, the marshal is to keep safely "all prize property." § 4624 makes provision "whenever any captured vessel, arms, munitions or other material are taken for the use of the United States." By § 4629, "the net proceeds of all propery condemned as prize" shall, under certain conditions, be decreed to the captors. Thus, throughout the chapter, a careful reading will show that it is not captured vessels alone which are to be condemned as prize, but it is captured property. Such property may be vessels; it may be their equipment or their cargo Whatever may be so captured is subject to the same disposition, since the language of § 4613 creates a uniform rule for all prize property.

Guns from the *Colon*, the *Viscaya* and the *Almirante Oquendo* were saved, while the vessels were destroyed. The guns were captured by the libellant's fleet and are in the possession of the United States because so captured. The Government, with the property in its possession, can not deny the capture, and this must result in condemnation, since the statute makes capture the sole test of the right of condemnation in prize.

No Implied Repeal.

The Government meets this plain and straightforward application of the words of the statute by the argument that the grant of bounty by R. S. § 4635 for the destruction of a vessel excludes a grant of prize money for the capture of any portions of the destroyed vessel's outfit which might have been saved. This argument, when reduced to its essentials, is that § 4635 impliedly repeals the other provisions of the same chapter making prize of such property. This contention is easily seen to be unsound. Repeals by implication are not favored, and a repeal of one portion of a statute by another portion of the same statute can not be implied; rather are they to be reconciled. If two parts of a statute can stand together, the statute must be construed to give force to both. These are elementary principles of construction. *Rodgers* v. *United States*, 185 U. S. 83. Here an easy reconciliation is effected. The bounty for the destruction of the vessel may be received by the captors, while the prize money should be decreed them for the capture of its armament. We rest our claim upon the sound principle of a plain reading of the statute itself.

The reasons impelling this enactment by Congress are all upon the surface of the statute. The primary reward for a successful naval combat is prize money derived from the property captured. This depends upon the existence of a *res* to be sold or appropriated by the Government, the value of which is to be distributed to the captors to such an extent as the law may provide. Where such a *res* exists, the jurisdiction of the prize courts attaches and the right of the captors to a distribution follows. Bounty is granted, as we have seen, where the gallantry and success were both as great, but where the vessel itself, the chief subject of prize, was destroyed.

Therefore, to determine whether any prize money is

due, the first question is whether there is captured property; if so, prize money accrues. Here this condition exists.

Bounty is granted (R. S. § 4635) for the destruction of "a ship or vessel of war." This section says nothing about cargo, armament or equipment. This grant does not take away the right to share in prize money derived from the sale of such portions of the vessel's equipment as may be saved.

A Crucial Test.

The possibility of question in the adjudication of this case comes alone from the fact that the United States took possession of these guns. Had they been delivered to a prize court and sold at auction, no shadow would ever have arisen over the right of the captors to one-half the proceeds of the sale. The appropriation by the United States takes the place of the judicial sale, and the value of the property furnishes the measure of the fund from which the captors are to be paid.

The Captured Cash.

The third question, as to the cash, is necessarily governed by the second, if that is in favor of the captors. It may be discriminated in the fact that the guns are a part of the vessel's equipment, while the money is in the nature of cargo or supplies.

The cargo in prize is entirely separate from the vessel. Contraband of war in a neutral vessel is prize, although the vessel is not; neutral goods on an enemy's vessel are free, although the vessel is condemned (President's Proclamation, April 26, 1898, 30 Stat. L. 1771). The cargo may be thrown overboard in a storm on the way to the prize court and the vessel condemned; or the cargo may be unloaded and the vessel burned at the wharf and thus lost. If both

vessel and cargo are condemned as prize, the value of both is distributed to the captors; but a vessel may be condemned and the cargo released, or *vice versa*. Thus prize money may be paid on either vessel or cargo separately, or on both together.

In *Seventy-eight Bales of Cotton* (21 Fed. Cas. 1100), cotton found floating on the sea, apparently thrown overboard from a blockade runner, was condemned as prize. The cargo was treated as something subject to capture, entirely independent of the capture of the vessel.

So bounty may be paid for the destruction of the vessel and prize money allowed on condemnation of the cargo, of which the money here captured is an equivalent.

The Court Below.

The opinion of the court below was in favor of the condemnation of all property captured from sunken vessels in the *Dewey* case. That opinion covering the point raised in this case, no opinion was rendered in this case. The language of the court below is as follows:

"The next question is whether libellant is entitled to condemnation in prize of the value of property taken from vessels sunk or otherwise destroyed.

"In behalf of the United States it is objected that, inasmuch as libellant has received bounty for the destruction of these vessels under § 4635, he is not entitled, as prize, to property taken from them; that bounty is 'a substitute for the prize itself'—(*The Selma*, 1 Low. 30)—something given 'in lieu of it' (*Porter* v. *United States*, 106 U. S. 607). Bounty is given in lieu of prize only in the case of a ship or vessel of war belonging to an enemy which is sunk or otherwise destroyed, or which it may be necessary to destroy in consequence of injuries received in action. It is proportioned not to the value of the ship, or of its armament or munitions, but to the number of persons on board of her at the commencement of the engagement. While it may be true that the original idea was that the

amount so ascertained would be a fair substitute for the prize itself, and such idea may have been not far wrong in the days of wooden vessels of war, yet in these days of steel armored cruisers and battle ships, with all of their expensive appliances, the highest amount of bounty allowed is very inconsiderable compared with the value of the ship sunk or destroyed. It is not an equivalent for prize. There is, therefore, no reason arising out of the amount paid as bounty that would justify the claim that, in fairness, such reward should be exclusive.

"The reward is apparently bestowed for the injury done to the enemy in the loss of fighting power; it matters not how valuable may be the appliances and outfit that go down with her or that are involved in her destruction.

"If the vessel were captured, the cargo or outfit and appliances would enter into the estimate of the total value. I find nothing in the statute to prohibit the condemnation in prize of property captured or taken from ships sunk or destroyed in addition to bounty paid for the destruction of the ship, and I am of opinion that it should be allowed."

Conclusion.

The gist of the case is this: The United States came into possession, by reason of the acts of the libellant's fleet, of a vessel, arms and munitions of the enemy, captured in lawful war. The prize statute grants a money reward to the officers and men capturing property in war. The United States can not appropriate the captured property without accounting to the captors for the share which the law grants for their services in securing it.

GEORGE A. KING,
WILLIAM B. KING,
Attorneys for Rear-Admiral Henry C. Taylor, commanding the U.S.S. Indiana, *and numerous other officers and many enlisted men.*

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Supreme Court of the United States.

No. 273.—October Term, 1902.

THE UNITED STATES, Appellant, *vs.* HENRY C. TAYLOR, Rear Admiral United States Navy, Etc.	Appeal from the Supreme Court of the District of Columbia.

APPELLEE'S PETITION FOR A REHEARING.

Now comes the appellee and respectfully prays the court to restore the above-entitled cause to the docket and order a reargument thereof.

A rehearing of the cause is sought by the appellee upon this proposition: The Spanish cruiser, "*Infanta Maria Teresa*," having been captured on July 3, 1898, was thereafter taken for, or appropriated to the use of the Government, and her loss, which occurred subsequent to the appropriation, did not fall upon the captors, but must be borne by the United States, like that of a public vessel, or other public property.

JOS. K. McCAMMON,
GEORGE A. KING,
JOHN S. WEBB,
WM. B. KING,
JAMES H. HAYDEN,
Of Counsel for the Appellee.

CERTIFICATE OF COUNSEL.

The undersigned members of the bar of this Honorable Court believing that the foregoing petition possesses merit and warrants the granting of a rehearing of this cause, respectfully certify accordingly.

JOS. K. McCAMMON,
GEORGE A. KING,
JOHN S. WEBB,
WM. B. KING,
JAMES H. HAYDEN.

BRIEF IN SUPPORT OF THE APPELLEE'S PETITION FOR A REHEARING.

The Spanish Cruiser "Infanta Maria Teresa" was Captured and Made a Prize of War on July 3, 1898.

The decision of this court in the case of *United States* v. *George Dewey, Admiral, U. S. Navy, etc.* (*No.* 309, *October Term*, 1902), leaves no room for doubt that the "*Teresa*" was captured and made a prize of war in the battle of Santiago. On this point her's is a clearer case than that of the prizes taken in the battle of Manila Bay. Of the latter this court said (Opinion, p. 1):

> "Under the severe fire of the American fleet they steamed to a position of greater safety and, after the battle, backed ashore, and, when in shallow water, their sea-valves were opened and they settled on the bottom. They and other armed vessels were afterward set on fire by a detachment of the United States fleet, in obedience to a signal from the flagship when the firing ceased."

In the present case it appears that the "*Teresa*" was not sunk in the engagement or thereafter. Under the

severe fire of the American fleet she was *stranded*, and lay upon the beach in an upright position, and submerged no further than her normal load water-line. She was not sunk, but, in fact, was elevated by her contact with the beach. (*Report, Secretary of the Navy*, 1898 *Vol. II, p.* 578. *See diagram on page following* 572.)

Again, it appears that after the battle of Manila Bay, no effort was made by the American fleet to secure possession of the partially sunken Spanish ships. On the contrary Admiral Dewey ordered that they be set on fire and rendered unfit for immediate service, in case of hostile recapture. At Santiago, on the contrary, the *Teresa's* officers and men were made prisoners of war as soon as she surrendered. The captors did not then take formal possession of her and place a prize crew on board because of the more important business in hand, which the interests of the Government required them to perform. Nor was it in anywise necessary for the captors to go through the empty form of taking possession of the prize. She was already securely within their possession. Two days after the battle the Chief of Staff and other captors visited the *Teresa*. The delay of two days was not in the least significant, and does not tend to show that they had abandoned her. (*U. S.* v. *Dewey supra*). Their first duty was to see to the repair of their own vessels and resume the blockade of Santiago. At the first opportunity (*July* 6,) without any suggestion from the Navy Department, Admiral Sampson appointed a board to examine and report upon the condition of the Spanish vessels. His purpose was to ascertain (1) whether any of them could be sent in for adjudication, pursuant to the statute (*R. S. U. S. Sec.* 4615); (2) whether any of them were salvable, by the means at the captor's command or which might be procured from the United States; and (3)

whether any of them "not being in condition to be sent in for adjudication" should be surveyed and appraised and sold in the manner prescribed by the statute (*R. S. U. S.* 4615, *last clause*). This board commenced its work on July 7th, and completed it prior to July 13th, when its report was presented to the commander-in-chief. This report showed (1) the *Teresa* was a salvable ship, having received only local injury; (2) her recovery was recommended; and (3) it was further recommended that she be secured in her position by hawsers, to save her from possible further damage. To be sure the superstructure of the vessel, with the exception of her turrets and the upper portions of her armor, had been damaged by fire and was of no great value, but the hull proper or the portion of the ship extending from the protective deck, downward to her keel, was practically intact. Not only is the hull proper the more costly portion of a vessel, but it is the portion upon which she depends for her structural strength, stability, and buoyancy. Furthermore, it contains the main engines and boilers, and the greater part of the ship's machinery. An investigation made by the Navy Department in the latter part of July, disclosed the fact that one of the *Teresa's* bottom plates had been perforated and cracked by her impact with the beach when run ashore during the battle, but that was a local and unimportant injury. It did not in anywise affect the structural integrity or strength of the vessel, and was something capable of being easily and completely repaired. She was successfully salved and made a voyage to the port of Guantanamo, then occupied by the United States as a base for naval operations on the southern coast of Cuba.

The inevitable conclusion is that the *Teresa* was not destroyed in the engagement and not damaged to an ex-

tent greater than, if as great as, the *prizes* taken at Manila Bay. She was captured and made a prize on July 3, 1898. This fact does not depend upon anything done to her by the captors or by the Navy Department after the battle. Subsequent events could neither give, nor deprive her of her status as a prize.

In this case, as in the Dewey case, the captors made reports to the Navy Department by cable and by letter. In some of them the *Teresa* and the prizes taken at Manila Bay were spoken of as *destroyed*. Such loose expressions can have no significance. (*U. S.* v. *Dewey supra, p.* 7).

After being Captured, the "Teresa" was Taken for or Appropriated to the Use of the Government, and Her Subsequent Loss, which Occurred on or about November 1, 1898, *did not Fall upon the Captors, but Must be Borne by the United States, like that of Any Public Vessel or other Public Property.*

At the hearing of this case the above proposition was merely stated. It was not fully considered either in the appellee's brief or the argument, because it had been conceded by the Attorney General that the "*Teresa*" was appropriated for the use of the Government and that her subsequent loss did not affect the rights of the captors.

In the brief for the United States we find this (*pp.* 33-34):

> "*It is not contended on the part of the United States that either the appropriation of the "Teresa" by the United States, when the wreck was finally raised and sent to Guantanamo for preliminary repairs, or the subsequent abandonment of the vessel at*

*sea and her final destruction on Cat Island have divested the appellee of any rights whatever. Had the "Teresa" been a prize the appellee's rights as captor would not have been changed by the appropriation, and after appropriation it would have made no difference to the appellee whether the vessel was lost or not, as he was not responsible for what became of her. * * * Furthermore, being so 'sunk or otherwise destroyed' she could not be a prize for the benefit of the captors, but was the property of the United States jure republicæ, just as much so as if she had been captured by a joint naval and military force. The appropriation was by the right of the United States as sovereign and not under section 4624 of the Revised Statutes. The appellee is entitled to bounty for the destruction of the 'Teresa,' but to nothing more."*

The opinion of this court in the Dewey case shows that counsel for the United States were wrong in saying that the "*Teresa*" was not captured and made a prize. But the position taken by them with respect to the appropriation of the vessel by the Government and her subsequent loss is correct, being in accord with the facts and consistent with the conduct of the Secretary of the Navy and other naval authorities.

In the report of the Navy Department for the year 1898 (*Vol. I,* p.* 16), the Secretary said:

> "The Department, immediately after the battle of Santiago, had an examination of the Spanish wrecks made, and entered into a contract with the Merritt

* We fear that the first volume of this report, a public executive document, put in evidence in the prize court, and admissible as evidence on appeal, was not furnished to or considered by this court, after the argument of the case. Counsel for the United States absolutely refused to print the record in the usual way, but agreed to provide the court with copies of all reports referred to. If this were not done, counsel for the captors cannot be held answerable for the omission.

& Chapman Wrecking Company to raise these ships. *The Maria Teresa was successfully raised* and an effort was made by the contractors to bring her to the Norfolk Navy Yard, as under their contract vessels raised were to be delivered at that port. * * * On November 1 she encountered heavy weather off the Island of San Salvador and was on that night abandoned. * * * A court of inquiry into this matter has been ordered."

The Assistant Secretary said (*Id. pp.* 100-103):

"I think it was the day following the battle of July 3, when the reports had come to the Department of the condition of the wrecks of the ships of Cervera's fleet, that you suggested the prudence of attempting to save such of them as seemed worth the effort.

"Negotiations were at once opened by telegraph with the Merritt & Chapman Wrecking Company. Representatives of that concern came to Washington and were met in this office, where the subject of the inquiry was fully talked over, and an agreement entered into between the Department and the Company by which the latter were to proceed at once to the scene of operations with a full and suitable outfit to commence operations at once, and to continue them diligently until a successful result was reached, or until the contracts were terminatad by the order of the Department.

* * * * * *

"They (wrecking company) then proceeded at once to the *Maria Teresa*, as presenting a wrecking problem which promised satisfactory results. * * *

"In the meantime the progress of the wreckers had not been entirely satisfactory to the Department so far as results showed, and the entire wrecking operations were placed under the immediate charge of Commodore Watson, then in command of that station. Through him regular weekly reports were made as to the progress of the work. * * *

"From that time, by direction of the Department, wrecking operations were centered on the *Teresa*."

The contract with the wrecking company, to which the Secretary and Assistant Secretary of the Navy refer in their reports (*supra*) was made by the Secretary in the name and on behalf of the United States (*p.* 15). It shows that the United States considered the captured property its own. The rights of the captors were not recognized in any way. *The United States was not acting as a salvor.* It shows that the Government had no intention of sending in the vessel for adjudication as provided by the statute. (*R. S. U. S. Sec.* 4615.) She was not to be delivered to a prize court, but to the commanding officer of the Norfolk Navy Yard. She was not to "be sent in for adjudication to the nearest home port in which a prize court might be sitting," in accordance with article 20 of the "Instructions to Blockading Vessels and Cruisers." (*General Order June* 20, 1898.)

The contract was made three days after the battle, *without the knowledge or consent of the captors,* and before they had an opportunity to ascertain the condition of the Spanish ships and see whether any of them could be sent in for adjudication, and if "not in condition to be sent in" to survey and appraise them, to the end that they might be sold in accordance with the last clause of Section 4615, Revised Statutes.

The report of the Navy Department for the year 1898 (*supra*) contains a "*Report of the Chief of the Bureau of Construction and Repair,*" dated September 24, 1898, or five weeks before the *Teresa* was lost (*p.* 511). This was an official document and furthermore was adopted by the Secretary, when he accepted and incorporated it in his official report for the year, the latter being dated Novem-

ber 15, 1898, fourteen days after the *Teresa* was abandoned at sea and after her loss was reported to the Department. It contains a table, entitled "*Table of Vessels of the United States Navy*" (*p.* 526, *et seq.*), made up of the names and descriptions of various vessels. These are grouped in classes, such as: "*First-class battleships*," "*Second-class battleships*," "*Armored cruisers*," "*Double turreted monitors*," "*Harbor defense monitors*," "*Protected cruisers*," "*Gunboats*," "*Torpedo-boat destroyers*," "*Torpedo-boats*," "*Iron and wooden steam vessels*," etc.; also a class entitled "CAPTURED IN SPANISH-AMERICAN WAR" (*pp.* 570-573). We reproduce the list last mentioned for it furnishes conclusive proof that the *Teresa* had been appropriated by the Government and was its property on or before September 24, 1898.

CAPTURED IN SPANISH-AMERICAN WAR.

Name.	Type.	Rig.	By whom and where built.	Condition or service.	Length.	Extreme breadth.	Mean draft.	Displacement.	Gross tonnage.	Net tonnage.	Propulsion.	Speed in knots per hour.	Maximum indicated horse-power.	Tons per inch immersion at normal draft.	Normal coal supply.	Bunker capacity.	Maximum draft aft at lowest point of keel. Ship ready for sea, bunkers full.
					Ft. In.	*Ft. In.*	*Ft. In.*	*Tons.*	*Tons.*	*Tons*				*Tons*	*Tons.*	*Tons.*	*Ft. In*
Alvarado	Steel gunboat	2 pole masts.	Clydebank, England.	North Atlantic Fleet.	109 5	15 5	4 11	100	.....	.....	Single screw.	19	137	.....	.....	11	.....
Barcelo	Torpedo-boat	.....	Normand, Havre, France.	Asiatic Station.	124 7	11 0	6 11	66	.....	.....	Single screw.	17	600	.....	.....	19	.....
Callao	Steel gunboat	Schooner	Cañacan	Asiatic Station.	119 1	17 7	6 8	208	.....	.....	Twin screw.	9.7	250	.....	.....	32½	.....
INFANTA MARIA TERESA.	STEEL ARMORED CRUISER.	2 MIL. MASTS.	BILBAO	BEING REPAIRED.	338 2	65 0	21 6	7,000	.....	.....	TWIN SCREW.	20½	13,700	.....	.....	1,050	.....
Leyte	Iron gunboat	.....	Whampoa, Hongkong.	Asiatic Station.	98 5	16 6	7 3	151	.....	.....	Twin screw.	8	150	.....	.....	25	.....
Manila	Iron transport	.....	Leith	Asiatic Station.	226 2	29 10	13 3	1,900	.....	.....	Single screw.	9	750	.....	.....	204	.....
Mindanao	Wooden gunboat.	.....	Cartagena	Asiatic Station.	92 2	17 10	5 6	83	.....	.....	Twin screw.	8	110	.....	.....	18	.....
Sandoval	Steel gunboat	2 pole masts.	Clydebank, England.	North Atlantic Fleet.	109 5	15 5	4 11	100	.....	.....	Single screw.	19	137	.....	.....	11	.....

Name.	Batteries.	Torpedo tubes.	Armor.			Protective deck.		Complement.	Keel laid.	Launched.	Date of capture.	Date of first commission in U.S. Navy.
			Sides.	Turrets.	Barbettes.	Slopes.	Flat.					
			Inches.	*In.*	*In.*	*In.*	*In.*					
Alvarado	1 57mm 1 37mm	...	.....	.....	.....	.....	.....	33	.....	1895	.....	.....
Barcelo	2 mach., 25mm	2	.....	.....	.....	.....	.....	18	.....	1886	.....	Aug. 13, 1898
Callao	1 Hontoria, 3″ 5 1 Hontoria, 2″.75	...	.....	.....	.....	.....	.....	35	.....	1888	.....	July 2, 1898
INFANTA MARIA TERESA.	2 Nordenfelt, 11mm 2 11″ Hontoria 10 5″.5 Hontoria 8 57mm Hotchkiss 8 37mm Hotchkiss 2 11mm Nordenfelt 2 2″.75 bronze.	8	10 *to* 12	9.8	.....	.....	2	497	.....	1890	.....	.....
Leyte	1 Hontoria, 3″.5 1 Hontoria, 2″.75	...	.....	.....	.....	.....	.....	35	.....	1887	.....	.....
Manila	2 Nordenfelt, 11mm 2 bronze guns	.....	.....	.....	.....	.....	.....	77	.....	1883	.....	July 20, 1898
Mindanao	1 bronze rifle, 4″.8 1 mach., 11mm	...	.....	.....	.....	.....	.....	35	.....	1871	.....	.....
Sandoval	1 57mm 1 37mm	...	.....	.....	.....	.....	.....	33	.....	1895	.....	.....

Again, in the same report, we have this list (pp. 588-589):

SUMMARY SHOWING THE NUMBER OF VESSELS IN THE UNITED STATES NAVY.

Regular Navy.

First-class battleships	12
Second-class battleship	1
Armored cruisers	2
Armored ram	1
Double-turreted monitors	6
Steel single-turret monitors	4
Iron single-turret monitors	13
Protected cruisers	13
Protected cruisers sheathed with wood	2
Gunboats	9
Light-draft gunboats	3
Composite gunboats	6
Training ship (Naval Academy)	1
Special class	2
Torpedo-boat destroyers	16
Steel torpedo-boats	35
Submarine torpedo-boat	1
Wood torpedo-boat	1
Captured in Spanish-American War	8
Iron cruising vessels	5
Wooden cruising vessels	8
Sailing vessels	6
Tugs	14
Wooden steam vessels unfit for sea service	11
Wooden sailing vessels unfit for sea service	6
Total number of vessels in regular Navy	189

Auxiliary Navy.

Merchant vessels converted into auxiliary cruisers	11
Converted yachts	28
Converted tugs	27
Steamers converted into colliers	19
Special class	17
Revenue cutters	15
Light-house tenders	4
United States fish commission	2
Total number of vessels in auxiliary Navy	123
Grand total	312

The *Teresa* was one of the eight vessels "CAPTURED IN SPANISH-AMERICAN WAR," and was one of the 189 "VESSELS IN REGULAR NAVY." We submit that on the date of this report the *Teresa* was public property, in no less a sense than were the *Oregon*, the *Indiana*, the *Iowa*, the *New York*, and the *Brooklyn*. The appropriation of the ship had become a transaction as complete as the Department could make it. The Department had done more than signify its election to take the ship. It had taken her for its use and dealt with her accordingly.

On November 17, 1898, after the loss of the vessel, the Secretary ordered a naval court to inquire into "The circumstances connected with the abandonment of the steamer *Infanta Maria Teresa*, late of the Spanish Navy, at sea, about 310 miles distant from Caimanera, Cuba." The order convening the court (*p.* 9) contained this:

> "The attention of the court is called to the instructions containing particulars to be investigated concerning the loss or the grounding of a ship of the Navy, contained in the U. S. Navy Regulations (Articles 1744 to 1747), which the Department deems applicable to the case."

The articles to which the Secretary refers appear in the new edition of the Navy Regulations (1900) as Articles 1806 and 1807, under the title: "*Inquiry into the loss or grounding of a ship of the Navy.*"

The regulations do not provide for the appointment of a court of inquiry to investigate the loss of a prize. *Such a matter would fall within the exclusive jurisdiction of the district courts of the United States.* (*Notes on the Principles and Practice in Prize, Story, p.* 29.) Neither do they authorize the ordering of such a court unless a vessel of or persons in the Navy are concerned in the subject of the inquiry.

We fear that in some way the court has been led to suppose that the captors had some part in the floating and repair of the prize. *Such was not the case.* About July 19th, the wrecking company took possession of the vessel and other captured property, which up to that time had been under the care of the captors. The captors took no part in the subsequent operations, nor were they consulted with regard to them. On August 12th Admiral Sampson and his command were ordered home. The fleet left Cuban waters and proceeded to New York. Thereafter, neither the admiral, as the commander-in-chief, nor any other representative of the captors, had any connection, official or otherwise, with the floating or the repair of the *Teresa.* The work was done by the wrecking company, assisted by a naval force. An officer of the Navy, delegated to act as the Department's representative, was always present at the scene of operations. The officer in command of a naval force, which had its headquarters or base at Guantanamo had supervisory charge of the work, and from time to time made reports to the Department concerning its progress or lack of progress. He was not one of the captors, and did not assume to represent

them. (*Report Sec. of Navy, Vol.* I, *pp.* 100–103.) The *Teresa* sailed from Guantanamo for Norfolk when the Department's representative considered that she had been put in a seaworthy condition. Her course was planned by the Department's representative (*pp.* 93–94). On her way she was navigated, in part by naval officers representing the Department, and in part by the wrecking company, which also represented it. The captors were not represented. Their interest in the vessel, herself, had ceased, through her appropriation by the United States. But their legal right to share in a sum equal to her value remained, being preserved by sections 4624 and 4625 Revised Statutes.

But for the interference of the United States, the captors could have sold the stranded vessel and the property on board of her, realizing a fund which would have been sent to the prize court at Key West, where it would have taken the place of the vessel herself, and after adjudication, been distributed like other prize money. (*R. S. U. S., Sec.* 4615, *last clause.*)

Now let us turn to the statute which governs this question. It is provided (§ 4624, *R. S. U. S.*):

> "*Whenever any captured vessel, arms, munitions, or other material are taken for the use of the United States before it comes into the custody of the prize court, it shall be surveyed, appraised, and inventoried by persons as competent and impartial as can be obtained, and the survey, appraisement and inventory shall be sent to the court in which proceedings are to be had; and if taken afterward* sufficient notice shall first be given to enable the court to have the property appraised for the protection of the rights of the claimants and captors. *In all cases of prize property taken for or appropriated to the use of the Government, the Department for whose use it is taken*

or appropriated shall deposit the value thereof with the Assistant Treasurer of the United States nearest to the place of the session of the court, subject to the order of the court in the cause."

The attention of the court is called, especially, to these expressions contained in this statute:

"Whenever any captured vessel * * * or other material *are taken for the use of the United States.* * * *"

"In all cases of prize property *taken for or appropriated to the use of the Government.* * * *"

This means that it is the duty of the Government to make the survey, appraisal, and deposit required by law *when a prize* IS *taken by the Government, from the captors, with a view to her use by the Government,* IN THE FUTURE. *There must be, not only an election to appropriate, but the appropriation must be a completed transaction.* The law does not permit the Government to divert the prize from one of the two regular methods of disposition; *i. e.*, adjudication *in rem*, or sale and adjudication of the proceeds—and then say to the captors that it does not like its bargain and they can have the prize for adjudication if they can find and send her in. Without doing violence to the statute it cannot be held that the Government can make an actual appropriation of a prize, yet make the legal effect of the appropriation conditional upon the Government's deriving benefit from her use.

A parallel case would be one where a vessel had been built for the Government, under contract, and delivered to and accepted by it. There, although the vessel were lost before she had performed any service and before payment had been made, the Government would be bound to pay for her. Thus, from the moment when a prize passes from the ownership of the captors to that of the United

States through appropriation, all risks attendant upon the ownership of the vessel devolve upon the Government. The captors have no title or interest in the vessel herself, and consequently no risks and responsibilities with respect to her. From that moment the Government is bound to replace the ship, by a deposit, equal to her value, when taken.

In its opinion, the court notices the fact that the *Teresa* was not surveyed, appraised, and sold, as prize property, not in condition to be sent in for adjudication. It should be remembered that the Secretary of the Navy by his contract with the wrecking company, elected to appropriate the vessel on July 6, 1898, before the captors had completed their preliminary survey and had an opportunity to appraise and sell her. The statute (*R. S. U. S. Sec.* 4615) provides that prize property shall *not* be sold by the captors, when the Government has appropriated it. It is true that the Secretary of the Navy neglected to order an appraisal of the *Teresa* until July 13, 1899, or shortly before this suit was brought. The Secretary was of the opinion that for some reason the *Teresa* and the Spanish ships taken at Manila Bay were not captured as prize and that the United States "*jure reipublicæ*" could take and dispose of them as it pleased, without accountability to any one. In the Dewey case it has been held that the Secretary was wrong. Surely his error on a question of law cannot tend to deprive the captors of their rights.

The captors' delay in filing their libel cannot militate against them. It was filed on the day after that in the Dewey case.

To sum up. We contend that before her loss, the "*Teresa*" had been appropriated by the United States and should be condemned as prize, because:

(1) The Secretary of the Navy exercised absolute con-

trol over her in contracting to have her floated and brought to Norfolk.

(2) The Secretary, by his report for the year 1898, recognized that the "*Teresa*" had been appropriated by the Government, and was, when lost, one of the vessels of the regular Navy.

(3) The Secretary of the Navy recognized that the "*Teresa*" was a vessel of the Navy, by directing a court of inquiry, appointed *after* her loss, to proceed in accordance with the regulations governing "*An inquiry into the loss or grounding of a ship of the Navy.*"

(4) Counsel for the United States admitted that the "*Teresa*" had been appropriated by the United States and her loss did not affect the captor's rights.

We submit that, in the official report of the Secretary of the Navy and in the brief for the United States, we have admissions by the Executive branch of the Government, that the "*Teresa*" had been appropriated for the use of the Government, and that the judiciary should not deny to these acts of executive officers their full legal effect.

We submit that a case of such importance as this, affecting as it does the interests of all the officers and men who won for the United States the greatest naval battle of modern times, should not be dismissed and the captors denied a full reward for their bravery, without a thorough hearing upon and consideration of the foregoing facts.

Respectfully submitted.

JOS. K. McCAMMON,
GEORGE A. KING,
JOHN S. WEBB,
WM. B. KING,
JAMES H. HAYDEN,
Of Counsel for the Appellee.

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29962

Supreme Court of the United States.

No. 273.—October Term, 1902.

The United States, Appellant, vs. William T. Sampson, Rear Admiral, U. S. Navy, et al. } Appeal from the Supreme Court of the District of Columbia.

[January 5, 1903.]

The Chief Justice: This libel in prize was filed by Rear Admiral Sampson in his own behalf and also in behalf of all of the officers and enlisted men of the United States Navy, who took part in the engagement off Santiago de Cuba on July 3, 1898, in the Supreme Court of the District of Columbia, and went to a decree of condemnation from which this appeal was prosecuted.

On May 19, 1902, the death of Rear Admiral Sampson was suggested by the Attorney General, and a motion made that the cause proceed under its then caption and without the substitution of any other individual as a party, which was postponed to the hearing of the case on its merits.

That hearing has been had, and counsel, in aid of the court, have made application for the substitution of the administratrix of Admiral Sampson, and submitted considerations in respect of the substitution also of one or more officers, as, and if, deemed necessary.

We think some one to carry on the proceedings in the interest of all should be substituted, but that it is not necessary that the personal representatives of those who may have deceased should come in, or that any person should *ex officio* be designated. The matter is merely one of convenience and without significance in itself.

Rear Admiral Evans, Rear Admiral Taylor, Captain French E. Chadwick, and others are represented in the litigation by counsel; but Rear Admiral Schley and others are not. Of those so represented, Rear Admiral Evans is absent on a foreign station, while Rear Admiral Taylor is within the jurisdiction. It seems to us that the substitution of Rear Admiral Taylor will satisfactorily meet the exigency, and it will be

Ordered accordingly.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 273.—October Term, 1902.

The United States, Appellant, *vs.* Henry C. Taylor, Rear Admiral, United States Navy, &c.	Appeal from the Supreme Court of the District of Columbia.

[February 23, 1903.]

This is an appeal from a decree of the Supreme Court of the District of Columbia, sitting as a District Court of the United States in admiralty, on a libel in prize filed by Willian T. Sampson, Rear Admiral, United States Navy, in behalf of himself and the officers and men of the naval force on the North Atlantic Station, who took part in the naval engagement off Santiago. During the pendency of the appeal in this court Admiral Sampson died, and his death being suggested, Admiral Henry C. Taylor was substituted by direction of the court. 187 U. S.

The engagement took place July 3, 1898, when the Spanish fleet, consisting of the Infanta Maria Teresa, Cristobal Colon, Viscaya, Almirante Oquendo, and the torpedo boats Furor and Pluton, which had been lying in the harbor of Santiago, made a sortie and attempted to force its way past the American fleet then blockading the port. None of the Spanish vessels were afloat at the close of the action. The least injured was the Cristobal Colon, which was sunk by her commander, and lay nearly on her beam ends. The vessel in the next best condition was the Infanta Maria Teresa, whose bottom had been pierced by a point of rock, while she was completely burned out above the protective deck. She lay nearly upright, being submerged to about her normal waterline aft, and a little less than this forward.

On July 6, 1898, a board of eight officers was designated by Admiral Sampson, the commander-in-chief, to make "a thorough examination of the condition of the wrecked Spanish vessels," and to consider and report on the possibility of saving any of them. July 13, 1898, the board reported that it was "possible and desirable to float the Infanta Maria Teresa," and as to the Cristobal Colon, "that if the weather continues favorable the probabilities are good for saving the vessel."

July 6, 1898, a contract was entered into between the Merritt-Chapman Derrick Wrecking Company and the United States, stating in its preamble that the United States was "desirous of raising and saving as many as possible of the Spanish vessels composing the fleet of Admiral Cervera,"

and providing that the contractors should, upon "arriving at the scene of the wreck of the Cristobal Colon, at once begin the work of raising that vessel," with so much of her armament, stores, &c., as it might be possible to recover, the vessel and appurtenances, if so required by the United States, to be transported to the navy yard at Norfolk, Virginia. The contract further stated: "Inasmuch as it is believed that the Cristobal Colon is the least damaged of all the Spanish vessels above referred to, the party of the first part will endeavor to float her, and in case of success in that undertaking, or if it should in the judgment of the senior United States naval officer present, be impossible to save that vessel, or if in his judgment, during the work on the Cristobal Colon, it should be practicable to devote any time, attention, or labor to the saving of any of the other of the said vessels, then the party of the first part shall do all in its power towards the accomplishment of that end," &c. And further: "An officer of the Navy, to be designated by the commander-in-chief, and at all times subject to his orders, under the direction of the Secretary, shall be present at the scene of the work as the Department's representative, to supervise and inspect the operations under this contract, and the party of the first shall subsist such officer on board its vessel during the performance of such work and until the return to the navy yard at Norfolk, if so required."

Soon after the report of the board convened by Admiral Sampson, the contractors began work on the Colon, and on July 29, 1898, a supplemental contract was made in regard to the work on that vessel. The operations were carried on for some time for the purpose of raising and floating both the Colon and the Teresa, but work on the Colon was stopped on or about August 31, 1898, and the efforts were concentrated on the Teresa, which was finally floated September 23, and reached Guantanamo, September 24. She there received certain temporary repairs, and on October 29, 1898, started for Norfolk, Virginia, convoyed by the U. S. S. Leonidas, and in tow of the United States repair ship Vulcan, and the wrecking tug Merritt, also using her own steam as far as the condition of her engines permitted. She was in charge of the wrecking company, but an officer of the Navy had charge of the Government men and employes on board, at the request of the wreck master, to assist the company in taking the ship to Norfolk. On November 1 she encountered a severe storm, and, after some hours, being apparently in a sinking condition, she was cast off, and ultimately drifted on to Cat Island, where she struck on the rocks and became a hopeless wreck. The evidence showed that her inability to withstand the storm was because of injuries sustained in action. There was no contention as to negligence, and a naval court of inquiry made findings and a report to the effect that the ship was not prematurely abandoned, and that the abandonment was in nowise due to the fault or negligence of any officer of the Navy.

July 17, 1899, libellants filed a petition in the Court of Claims for bounty under section 4635, Revised Statutes, for the destruction of the Viscaya, Oquendo, Colon, Furor and Pluton, which went to decree in their favor. 35 Ct. Cl. 578.

July 31, 1899, the libel in the present case was filed, setting forth that the Teresa, and all property taken from her, as well as that taken from the Colon and other sunken vessels, were prize of war, and had been appropriated to the use of the United States. The libel averred that the Teresa, "after being taken for and appropriated to the use of the United States, and while in the possession of the United States, under the control of the Secretary of the Navy, being in charge of contractors employed by him," was abandoned at sea, driven ashore, and finally abandoned, "and for that reason cannot be sent in for adjudication."

The District Court entered a decree of condemnation, July 30, 1901, to the effect that the Infanta Maria Teresa and all the property taken from her and from the other vessels were lawful prize of war, and directing upon the ascertainment of their value the amount should be deposited subject to the further order of the court, and that libellants were entitled to receive a moiety thereof. This appeal was then taken.

Mr. Chief Justice FULLER delivered the opinion of the Court:

After the engagement, the Teresa, as she lay shattered on the shore, was not in condition to be sent in for adjudication, and no survey and appraisement were thereupon had, nor was any sale directed by the commanding officer, as provided in section 4615, Revised Statutes; nor was the Teresa taken for and appropriated to the use of the United States and the value deposited under section 4624; nor were proceedings for adjudication commenced under section 4625, until by this libel But the attention of the Government and of the commanding officer was directed from the first to the question of salvage. The commanding officer was of opinion that the Colon and the Teresa could both be raised and reconstructed, and the Government was desirous that this should be done if possible. The proceedings to that end were conducted in perfect good faith, and there was no suggestion that by the attempt to save these ships the Government was appropriating them or either of them to its use within the intent and meaning of the statute. The Government argues, and with great force, that the Teresa having been sunk and destroyed to such an extent that the naval force was powerless to save her by its own resources, her legal status as sunk or destroyed became fixed immediately after the engagement, and that nothing but bounty could be recovered. In Dewey's case we ruled that this was applying too rigid a construction to the statute, and that if an enemy's vessel of war sunk in battle was subsequently raised and reconstructed by the Government, she might properly be adjudicated as prize, the result

being to let in the captors for prize money after the expense and cost of reconstruction and refitting had been deducted.

But the facts in this case are wholly different. The Teresa was raised and floated, but she was lost before she reached the Norfolk Navy Yard, which was the nearest practicable point at which she could be reconstructed.

We cannot concur in the view that the United States appropriated the Teresa to its own use within the meaning of the statute by attempting, with the advice and concurrence of the captors, to save her, or by the mere act of raising, and as soon as she floated, for that was only a step in the effort at salvage, and until salvage was accomplished, she was not appropriated to use. And this is true of the Colon, though the effort to salve her was given up before she floated.

Libellant's counsel agree with counsel for the Government that the question of prize or no prize must be determined as of the close of the engagement on July 3, 1898, but they contend that the Teresa was not sunk or destroyed as she lay stranded on the beach, and in her then condition could have been condemned as prize; that the Secretary of the Navy, in arranging to salve her, acted voluntarily, and "without the knowledge of the captors;" and that the latter, at least, yielded to his superior authority.

The statute makes no provision for adjudicating wrecks as prize. By section 4625 proceedings may be had in respect of proceeds of property appraised and sold; in respect of the value of property appropriated to use; and in respect of property entirely lost or destroyed.

In this case there was no appraisal and sale; there was no appropriation to the use of the Government in the meaning of the statute; the vessel had not been in condition to be sent in and then been "entirely lost or destroyed."

And it must be remembered that the Teresa could never have been raised and saved by the captors alone. Yet her salvability seems to have been generally conceded. The commanding officer took no measures to have the wreck appraised and sold, but concurred with the Government in the effort at salvage. In doing so he represented all who would have been interested if the ship had been saved, and while the chance of obtaining considerable prize money was quite good, no risk was run of losing bounty by taking that chance.

The Government acted with due prudence in employing persons, whose business it was to do such work, to raise and deliver the vessel at the Norfolk Navy Yard. If no attempt had been made, the vessel would finally have gone to pieces where she lay.

Salvors are not held responsible for a loss when attempting salvage in good faith, and with reasonable judgment and skill, *The Laura*, 14 Wall. 336, and we know of no reason why the Government should be held to a

more rigorous accountability even if it could in any case be regarded from the standpoint of a mere salvor of the property of another.

Where a hostile vessel of war has been so far destroyed that she cannot be brought in by the naval force, which reduced her to that condition, but she is raised, reconstructed and appropriated to use by the Government, the statute may be so construed as to permit the application of the doctrine of relation, but this case does not come within that view, and the claim for prize money in respect of the wreck itself is not sanctioned by the act of Congress. But libellants did not waive their right to bounty by seeking to recover prize money, and to bounty they are still entitled.

As to the property taken from the Teresa and the other wrecks, its disposition must follow the rule laid down in *Dewey* v. *United States.*

In our opinion the words "ship or vessel of war belonging to an enemy," as employed in § 4635, covered armament, outfit, and appurtenances, including provisions, money to pay the crew or for necessary expenditures, everything necessary to be used for the purposes of the vessel, and as a vessel of war.

The grant of prize money and the grant of bounty were distinct grants, and the applicable general rule ought not to be deprived of its force by particular exceptions.

The decree is reversed, without costs in this court, and the cause remanded with a direction to dismiss the libel.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 273.—October Term, 1902.

The United States, Appellant, vs. Henry C. Taylor, Rear Admiral, United States Navy, &c.	Appeal from the Supreme Court of the District of Columbia.

[February 23, 1903.]

Mr. Justice Brown, with whom was Mr. Justice Brewer, dissenting.

I am unable to distinguish this case in principle from that of the *United States* v. *Dewey*, just decided. In that case, the vessels were sunk and partially destroyed, but were subsequently raised, hauled into the slip, sufficiently cleaned up and overhauled to put to sea for Hong Kong under their own steam. The repairs were completed at Hong Kong, and the vessels commissioned as a part of the Navy.

In the present case, the Infanta Maria Teresa was also sunk and partially destroyed, but was raised, taken to Guantanamo, temporarily repaired, a crew put on board, was started for a port in the United States under her own steam, and was subsequently lost in a gale of wind. All the operations connected with her raising and repair were conducted by contractors engaged by the Navy Department, and supervised by a board of that department.

I submit that the fact that the vessels in Manila Bay were actually repaired and commissioned as vessels of the Navy and the Infanta Maria Teresa ~~was not~~, does not constitute a distinction in principle between the two cases; but the fact that in both cases the government elected to take possession of the vessels, and undertook to repair them for purposes of its own, is the turning point in the case. Had the vessels in Manila Bay been abandoned after being raised, and before they were repaired temporarily, had the Infanta Maria Teresa been either abandoned or lost before reaching Guantanamo Bay, or she had been there abandoned, I should have had no doubt that they could not either of them be considered as prizes of war. But the fact that, after being examined, the Maria Teresa was temporarily repaired at Guantanamo and sent to Norfolk, with a crew on board and under her own steam, indicates clearly to my mind that the government had elected to make the vessel its own property, and her subsequent loss was the loss of the Government and not of the captors. In fact, it is the election, and not the result of the election, which determines the ownership of the property.